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READINGS IN AMERICAN GOVERNMENT

BY

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PREFACE

In order to avoid the monotony of details and the dryness of mere descriptions, it seems wise to require a certain amount of collateral reading of a high order in connection with an introductory study of the national government. Government is a living organism, and it has been operated by great men who have possessed the ability to describe to the generality of citizens the true picture of its operation. Too frequently, however, the student in an introductory course in American Government is likely to escape without having made an acquaintance with these great political leaders, or without having read some of their admirable, even classic, opinions. No student of literature can thus avoid Shakespeare, or Browning, or Milton.

These selections, therefore, have been made with the view to bringing the student or general reader into contact with many of the significant men who have either occupied the governmental stage or who have been peculiarly situated or fitted to depict the important phases of American politics. An acquaintance with government artists through their spoken or written words, distinguished by their clarity, their penetrating insight, and by their authority and prestige, should reveal to the reader the real value of governmental institutions, just as good literature reveals the soul and life of a people.

I have attempted to make selections which will be helpful and clarifying, and which at the same time are more or less classic, in that they may be called standards of reference. Although the details of government are con-

stantly changing, the fundamentals are rather definitely fixed, and my purpose has been to select readings which deal almost exclusively with fundamentals, with general principles, so that they should be as useful a decade from now as at present. It is hoped that this collection will provide some diversion from the routine reading of the text-book, and will be at the same time informing and thought-producing.

In several cases it has been difficult to make the proper selection from the thousands of books which have passed through my hands, because of the small amount of material of a permanent, philosophical nature along the lines of their chief contributions to our government, in the writings and speeches of several of our great statesmen. There are many casual, fleeting observations, but surprisingly few with a permanent value, and it has been my desire to choose the classic rather than the ephemeral. In some cases selections have been taken because of their intrinsic value and irrespective of their authorship. Vice versa, a few selections have been taken primarily because of their authorship and secondarily because of their merit. It has been necessary to do this in order to direct attention to both men and ideas.

I have omitted from the selections all matter which was extraneous to my purpose, and where such condensations have been made, I have placed an asterisk after the title of the selection, thus avoiding frequent marks indicating deletions. The headnotes to the selections are intended to give the setting of the articles and to introduce the authors —they do not attempt to summarize. For the sake of convenience the readings are numbered and grouped roughly according to the usual arrangement in the textbooks on the subject. The sources from which the selections have been

taken may be found by reference to the table of contents and the list of citations.

I am especially indebted to Professor Jesse S. Reeves because it was at his suggestion and with his valued assistance that this work was undertaken. My colleagues in the Department of Political Science, together with Dean Henry M. Bates of the Law School, Professor F. W. Coker of Ohio State University and Professor A. N. Holcombe of Harvard University were very kind to give me valuable advice, and I wish to offer my appreciation for their help.

J. K. P.

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READINGS IN AMERICAN GOVERNMENT

CHAPTER I

ESTABLISHMENT OF THE AMERICAN GOVERNMENT

1. The Confederation and the Constitution* [1]

John Adams, the first Vice President of the United States, the second President, and one of our greatest statesmen, contributed greatly to the genius of American institutions. He was a member of the committee which drafted the Declaration of Independence and in Congress was one of the leading advocates of independence. The enunciation of the American principles of government found in his voluminous writings is of value in understanding the background of the Constitution. His inaugural speech which follows has never been objected to except as he himself said by "a lady who said she did not like it because there was but one period in it, and that period was too long."

When it was first perceived, in early times, that no middle course for America remained between unlimited submission to a foreign legislature and a total independence of its claims, men of reflection were less apprehensive of danger from the formidable power of fleets and armies they must determine to resist, than from those contests and dissensions, which would certainly arise, concerning the forms of government to be instituted, over the whole, and over the parts of this extensive country. Relying, however, on the purity of their intentions, the justice of their cause, and the integrity and intelligence

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of the people, under an overruling Providence, which had so signally protected this country from the first, the representatives of this nation, then consisting of little more than half its present numbers, not only broke to pieces the chains which were forging, and the rod of iron that was lifted up, but frankly cut asunder the ties which had bound them, and launched into an ocean of uncertainty.

The zeal and ardor of the people during the revolutionary war, supplying the place of government, commanded a degree of order, sufficient at least for the temporary preservation of society. The confederation, which was early felt to be necessary, was prepared from the models of the Batavian and Helvetic confederacies, the only examples which remain, with any detail and precision, in history, and certainly the only ones which the people at large had ever considered. But, reflecting on the striking difference in so many particulars between this country and those where a courier may go from the seat of government to the frontier in a single day, it was then certainly forseen by some, who assisted in Congress at the formation of it, that it could not be durable.

Negligence of its regulations, inattention to its recommendations, if not disobedience to its authority, not only in individuals but in States, soon appeared, with their melancholy consequences; universal languor, jealousies, rivalries of States; decline of navigation and commerce; discouragement of necessary manufactures; universal fall in the value of lands and their produce; contempt of public and private faith; loss of consideration and credit with foreign nations; and, at length, in discontents, animosities, combinations, partial conventions, and insurrection; threatening some great national calamity.

In this dangerous crisis the people of America were not abandoned by their usual good sense, presence of mind,

resolution, or integrity. Measures were pursued to concert a plan to form a more perfect union, establish justice, ensure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty. The public disquisitions, discussions, and deliberations, issued in the present happy constitution of government.

Employed in the service of my country abroad, during the whole course of these transactions, I first saw the Constitution of the United States in a foreign country. Irritated by no literary altercation, animated by no public debate, heated by no party animosity, I read it with great satisfaction, as a result of good heads, prompted by good hearts; as an experiment better adapted to the genius, character, situation, and relations of this nation and country, than any which had ever been proposed or suggested. In its general principles and great outlines, it was conformable to such a system of government as I had ever most esteemed, and in some States, my own native State in particular, had contributed to establish. Claiming a right of suffrage in common with my fellow-citizens, in the adoption or rejection of a constitution, which was to rule me and my posterity as well as them and theirs, I did not hesitate to express my approbation of it on all occasions, in public and in private. It was not then nor has been since any objection to it, in my mind, that the Executive and Senate were not more permanent. Nor have I entertained a thought of promoting any alteration in it, but such as the people themselves, in the course of their experience should see and feel to be necessary or expedient, and by their representatives in Congress and the State legislatures, according to the Constitution itself, adopt and ordain.

Returning to the bosom of my country, after a painful

separation from it for ten years, I had the honor to be elected to a station under the new order of things, and I have repeatedly laid myself under the most serious obligations to support the Constitution. The operation of it has equaled the most sanguine expectations of its friends; and, from an habitual attention to it, satisfaction in its administration, and delight in its effect upon the peace, order, prosperity, and happiness of the nation, I have acquired an habitual attachment to it, and veneration for it.

What other form of government, indeed, can so well deserve our esteem and love?

There may be little solidity in an ancient idea, that congregations of men into cities and nations, are the most pleasing objects in the sight of superior intelligences; but this is very certain, that, to a benevolent human mind, there can be no spectacle presented by any nation, more pleasing, more noble, majestic, or august, than an assembly like that which has so often been seen in this and the other chamber of Congress; of a government, in which the executive authority, as well as that of all the branches of the legislature, are exercised by citizens selected at regular periods by their neighbors, to make and execute laws for the general good. Can anything essential, anything more than mere ornament and decoration, be added to this by robes or diamonds? Can authority be more amiable or respectable, when it descends from accidents or institutions established in remote antiquity, than when it springs fresh from the hearts and judgments of an honest and enlightened people? For it is the people only that are represented; it is their power and majesty that is reflected, and only for their good, in every legitimate government, under whatever form it may appear. The existence of such a government as ours, for any length of time, is a full proof of a general dissemination of knowledge and virtue

throughout the whole body of the people. And what object of consideration, more pleasing than this, can be presented to the human mind? If national pride is ever justifiable or excusable, it is when it springs, not from power or riches, grandeur or glory, but from conviction of national innocence, information, and benevolence.

In the midst of these pleasing ideas, we should be unfaithful to ourselves, if we should ever lose sight of the danger to our liberties, if anything partial or extraneous should infect the purity of our free, fair, virtuous, and independent elections. If an election is to be determined by a majority of a single vote, and that can be procured by a party, through artifice or corruption, the government may be the choice of a party, for its own ends, not of the nation, for the national good. If that solitary suffrage can be obtained by foreign nations, by flattery or menaces; by fraud or violence; by terror, intrigue, or venality; the government may not be the choice of the American people, but of foreign nations. It may be foreign nations who govern us, and not we, the people, who govern ourselves. And candid men will acknowledge that, in such cases, choice would have little advantage to boast of over lot or chance.

Such is the amiable and interesting system of government (and such are some of the abuses to which it may be exposed), which the people of America have exhibited, to the admiration and anxiety of the wise and virtuous of all nations, for eight years; under the administration of a citizen who, by a long course of great actions regulated by prudence, justice, temperance, and fortitude, conducting a people, inspired with the virtues, and animated with the same ardent patriotism and love of liberty, to independence and peace, to increasing wealth and unexampled prosperity, has merited the gratitude of his fellow-citizens,

commanded the highest praises of foreign nations, and secured immortal glory with posterity.

In that retirement which is his voluntary choice, may he long live to enjoy the delicious recollection of his services, the gratitude of mankind, the happy fruits of them to himself and the world, which are daily increasing, and that splendid prospect of the future fortunes of his country, which is opening from year to year! His name may be still a rampart, and the knowledge that he lives, a bulwark against all open or secret enemies of his country's peace.

2. The Federalist Papers

In order to vindicate and recommend the new Constitution of the United States to the people of New York who were then considering its ratification, a series of articles were written for publication in New York in 1787 and 1788 by Alexander Hamilton, James Madison and John Jay. These articles were subsequently collected together under the title of The Federalist, and as such they have been handed down to future generations. The Federalist was the first authoritative interpretation of the Constitution, and it has now become a classic of political science. This first number of The Federalist written by Hamilton states the purpose of the series of articles.

After an unequivocal experience of the inefficiency of the subsisting federal government you are called upon to deliberate on a new Constitution for the United States of America. The subject speaks its own importance; comprehending in its consequences nothing less than the existence of the union, the safety and welfare of the parts of which it is composed, the fate of an empire in many respects the most interesting in the world. It has been frequently remarked that it seems to have been reserved to the people of this country, by their conduct and example, to decide the important question, whether societies of men

are really capable or not of establishing good government from reflection and choice, or whether they are forever destined to depend for their political constitutions on accident and force. If there be any truth in the remark, the crisis at which we are arrived may with propriety be regarded as the era in which that decision is to be made; and a wrong election of the part we shall act may, in this view, deserve to be considered as the general misfortune of mankind.

This idea will add the inducements of philanthropy to those of patriotism, to heighten the solicitude which all considerate and good men must feel for the event. Happy will it be if our choice should be directed by a judicious estimate of our true interests, unperplexed and unbiased by considerations not connected with the public good. But this is a thing more ardently to be wished than seriously to be expected. The plan offered to our deliberations affects too many particular interests, innovates upon too many local institutions, not to involve in its discussion a variety of objects foreign to its merits, and of views, passions and prejudices little favorable to the discovery of truth.

Among the most formidable of the obstacles which the new Constitution will have to encounter may readily be distinguished the obvious interest of a certain class of men in every State to resist all changes which may hazard a diminution of the power, emolument, and consequence of the offices they hold under the State establishments; and the perverted ambition of another class of men, who will either hope to aggrandize themselves by the confusions of their country, or will flatter themselves with fairer prospects of elevation from the subdivision of the empire into several partial confederacies than from its union under one government.

It is not, however, my design to dwell upon observations of this nature. I am well aware that it would be disingenuous to resolve indiscriminately the opposition of any set of men (merely because their situations might subject them to suspicion) into interested or ambitious views. Candor will oblige us to admit that even such men may be actuated by upright intentions; and it cannot be doubted that much of the opposition which has made its appearance, or may hereafter make its appearance, will spring from sources, blameless at least, if not respectable—the honest errors of minds led astray by preconceived jealousies and fears. So numerous indeed and so powerful are the causes which serve to give a false bias to the judgment, that we, upon many occasions, see wise and good men on the wrong as well as on the right side of questions of the first magnitude to society. This circumstance if duly attended to, would furnish a lesson of moderation to those who are ever so much persuaded of their being in the right in any controversy. And a further reason for caution in this respect might be drawn from the reflection that we are not always sure that those who advocate the truth are influenced by purer principles than their antagonists. Ambition, avarice, personal animosity, party opposition, and many other motives not more laudable than these, are apt to operate as well upon those who support as those who oppose the right side of a question. Were there not even these inducements to moderation, nothing could be more ill-judged than that intolerant spirit which has, at all times, characterized political parties. For in politics, as in religion, it is equally absurd to aim at making proselytes by fire and sword. Heresies in either can rarely be cured by persecution.

And yet, however just these sentiments will be allowed to be, we have already sufficient indications that it will

happen in this as in all former cases of great national discussion. A torrent of angry and malignant passions will be let loose. To judge from the conduct of the opposite parties, we shall be led to conclude that they will mutually hope to evince the justness of their opinions, and to increase the number of their converts by the loudness of their declamations and the bitterness of their invectives. An enlightened zeal for the energy and efficiency of government will be stigmatized as the offspring of a temper fond of despotic power and hostile to the principles of liberty. An over-scrupulous jealousy of danger to the rights of the people, which is more commonly the fault of the head than of the heart, will be represented as mere pretense and artifice, the stale bait for popularity at the expense of public good. It will be forgotten, on the one hand, that jealousy is the usual concomitant of love, and that the noble enthusiasm of liberty is apt to be infected with a spirit of narrow and illiberal distrust. On the other hand, it will be equally forgotten that the vigor of government is essential to the security of liberty; that, in the contemplation of a sound and well-informed judgment, their interest can never be separated; and that a dangerous ambition more often lurks behind the specious mask of zeal for the rights of the people than under the forbidding appearance of zeal for the firmness and efficiency of government. History will teach us that the former has been found a much more certain road to the introduction of despotism than the latter, and that of those men who have overturned the liberties of republics, the greatest number have begun their career by paying an obsequious court to the people; commencing demagogues, and ending tyrants.

In the course of the preceding observations, I have had an eye, my fellow-citizens, to putting you upon your guard

against all attempts, from whatever quarter, to influence your decision in a matter of the utmost moment to your welfare, by any impressions other than those which may result from the evidence of truth. You will, no doubt, at the same time, have collected from the general scope of them, that they proceed from a source not unfriendly to the new Constitution. Yes, my countrymen, I own to you that, after having given it an attentive consideration, I am clearly of opinion it is your interest to adopt it. I am convinced that this is the safest course for your liberty, your dignity, and your happiness. I affect not reserves which I do not feel. I will not amuse you with an appearance of deliberation when I have decided. I frankly acknowledge to you my convictions, and I will freely lay before you the reasons on which they are founded. The consciousness of good intentions disdains ambiguity. I shall not, however, multiply professions on this head. My motives must remain in the depository of my own breast. My arguments will be open to all, and may be judged of by all. They shall at least be offered in a spirit which will not disgrace the cause of truth.

I propose, in a series of papers, to discuss the following interesting particulars:—The utility of the Union to your political prosperity—The insufficiency of the present Confederation to preserve that Union—The necessity of government at least equally energetic with the one proposed, to the attainment of this object—The conformity of the proposed Constitution to the true principles of republican government—Its analogy to your own State constitution—and lastly, The additional security which its adoption will afford to the preservation of that species of government, to liberty, and to property.

In the progress of this discussion I shall endeavor to give a satisfactory answer to all the objections which shall

have made their appearance, that may seem to have any claim to your attention.

It may perhaps be thought superfluous to offer arguments to prove the utility of the Union, a point, no doubt, deeply engraved on the hearts of the great body of the people in every State, and one, which it may be imagined, has no adversaries. But the fact is, that we already hear it whispered in the private circles of those who oppose the new Constitution, that the thirteen States are of too great extent for any general system, and that we must of necessity resort to separate confederacies of distinct portions of the whole. This doctrine will, in all probability, be gradually propagated, till it has votaries enough to countenance an open avowal of it. For nothing can be more evident, to those who are able to take an enlarged view of the subject, than the alternative of an adoption of the new Constitution or a dismemberment of the Union. It will therefore be of use to begin by examining the advantages of that Union, the certain evils, and the probable dangers, to which every State will be exposed from its dissolution. This shall accordingly constitute the subject of my next address.

3. Reasons for the Ratification of the Constitution

Alexander Hamilton, who wrote the majority of The Federalist papers, was one of the principal authors of the Constitution. In this concluding article in The Federalist he summarizes the case for the adoption of the Constitution and points out admirably the true merits and also the defects of that instrument.

According to the formal division of the subject of these papers, announced in my first number, there would appear still to remain for discussion two points: "the

analogy of the proposed government to your own State constitution," and "the additional security which its adoption will afford to republican government, to liberty, and to property." But these heads have been so fully anticipated and exhausted in the progress of the work, that it would now scarcely be possible to do anything more than repeat, in a more dilated form, what has been heretofore said, which the advanced stage of the question, and the time already spent upon it, conspire to forbid.

It is remarkable, that the resemblance of the plan of the convention to the act which organizes the government of this State holds, not less with regard to many of the supposed defects, than to the real excellences of the former. Among the pretended defects are the reëligibility of the Executive, the want of a council, the omission of a formal bill of rights, the omission of a provision respecting the liberty of the press. These and several others which have been noted in the course of our inquiries are as much chargeable on the existing constitution of this State, as on the one proposed for the Union; and a man must have slender pretensions to consistency, who can rail at the latter for imperfections which he finds no difficulty in excusing in the former. Nor indeed can there be a better proof of the insincerity and affection of some of the zealous adversaries of the plan of the convention among us, who profess to be the devoted admirers of the government under which they live, than the fury with which they have attacked that plan, for matters in regard to which our own constitution is equally or perhaps more vulnerable.

The additional securities to republican government, to liberty, and to property, to be derived from the adoption of the plan under consideration, consist chiefly in the restraints which the preservation of the Union will im-

pose on local factions and insurrections, and on the ambition of powerful individuals in single States, who may acquire credit and influence enough, from leaders and favorites, to become the despots of the people; in the diminution of the opportunities to foreign intrigue, which the dissolution of the Confederacy would invite and facilitate; in the prevention of extensive military establishments, which could not fail to grow out of wars between the States in a disunited situation; in the express guaranty of a republican form of government to each; in the absolute and universal exclusion of titles of nobility; and in the precautions against the repetition of those practices on the part of the State governments which have undermined the foundations of property and credit, have planted mutual distrust in the breasts of all classes of citizens, and have occasioned an almost universal prostration of morals.

Thus have I, fellow-citizens, executed the task I had assigned to myself; with what success, your conduct must determine. I trust at least you will admit that I have not failed in the assurance I gave you respecting the spirit with which my endeavors should be conducted. I have addressed myself purely to your judgments, and have studiously avoided those asperities which are too apt to disgrace political disputants of all parties, and which have been not a little provoked by the language and conduct of the opponents of the Constitution. The charge of a conspiracy against the liberties of the people, which has been indiscriminately brought against the advocates of the plan, has something in it too wanton and too malignant, not to excite the indignation of every man who feels in his own bosom a refutation of the calumny. The perpetual charges which have been rung upon the wealthy, the well-born, and the great, have been such as

to inspire the disgust of all sensible men. And the unwarrantable concealments and misrepresentations which have been in various ways practiced to keep the truth from the public eye, have been of a nature to demand the reprobation of all honest men. It is not impossible that these circumstances may have occasionally betrayed me into intemperances of expression which I did not intend; it is certain that I frequently felt a struggle between sensibility and moderation and if the former has in some instances prevailed, it must be my excuse that it has been neither often nor much.

Let us now pause and ask ourselves whether, in the course of these papers, the proposed Constitution has not been satisfactorily vindicated from the aspersions thrown upon it; and whether it has not been shown to be worthy of the public approbation, and necessary to the public safety and prosperity. Every man is bound to answer these questions to himself, according to the best of his conscience and understanding, and to act agreeably to the genuine and sober dictates of his judgment. This is a duty from which nothing can give him a dispensation. 'T is one that he is called upon, nay, constrained by all the obligations that form the bands of society, to discharge sincerely and honestly. No partial motive, no particular interest, no pride of opinion, no temporary passion or prejudice, will justify to himself, to his country, or to his posterity, an improper election of the part he is to act. Let him beware of an obstinate adherence to party; let him reflect that the object upon which he is to decide is not a particular interest of the community, but the very existence of the nation; and let him remember that a majority of America has already given its sanction to the plan which he is to approve or reject.

I shall not dissemble that I feel an entire confidence

in the arguments which recommend the proposed system to your adoption, and that I am unable to discern any real force in those by which it has been opposed. I am persuaded that it is the best which our political situation, habits, and opinions will admit, and superior to any the revolution has produced.

Concessions on the part of the friends of the plan, that it has not a claim to absolute perfection, have afforded matter of no small triumph to its enemies. "Why," say they, "should we adopt an imperfect thing? Why not amend it and make it perfect before it is irrevocably established?" This may be plausible enough, but it is only plausible. In the first place I remark, that the extent of these concessions has been greatly exaggerated. They have been stated as amounting to an admission that the plan is radically defective, and that without material alterations the rights and the interests of the community cannot be safely confided to it. This, as far as I have understood the meaning of those who make the concessions, is an entire perversion of their sense. No advocate of the measure can be found, who will not declare as his sentiment, that the system, though it may not be perfect in every part, is, upon the whole, a good one; is the best that the present views and circumstances of the country will permit; and is such an one as promises every species of security which a reasonable people can desire.

I answer in the next place, that I should esteem it the extreme imprudence to prolong the precarious state of our national affairs, and to expose the Union to the jeopardy of successive experiments, in the chimerical pursuit of a perfect plan. I never expect to see a perfect work from imperfect man. The result of the deliberations of all collective bodies must necessarily be a compound, as well of the errors and prejudices, as of the good sense and wis-

dom, of the individuals of whom they are composed. The compacts which are to embrace thirteen distinct States in a common bond of amity and union, must as necessarily be a compromise of as many dissimilar interests and inclinations. How can perfection spring from such materials?

The reasons assigned in an excellent little pamphlet lately published in this city, are unanswerable to show the utter improbability of assembling a new convention, under circumstances in any degree so favorable to a happy issue, as those in which the late convention met, deliberated, and concluded. I will not repeat the arguments there used, as I presume the production itself has had an extensive circulation. It is certainly well worthy the perusal of every friend to his country. There is, however, one point of light in which the subject of amendments still remains to be considered, and in which it has not yet been exhibited to public view. I cannot resolve to conclude without first taking a survey of it in this aspect.

It appears to me susceptible of absolute demonstration, that it will be far more easy to obtain subsequent than previous amendments to the Constitution. The moment an alteration is made in the present plan, it becomes, to the purpose of adoption, a new one, and must undergo a new decision of each State. To its complete establishment throughout the Union, it will therefore require the concurrence of thirteen States. If, on the contrary, the Constitution proposed should once be ratified by all the States as it stands, alterations in it may at any time be effected by nine States. Here, then, the chances are as thirteen to nine in favor of subsequent amendment, rather than of the original adoption of an entire system.

This is not all. Every Constitution for the United States must inevitably consist of a great variety of particulars, in which thirteen independent States are to be

accommodated in their interests or opinions of interest. We may of course expect to see, in any body of men charged with its original formation, very different combinations of the parts upon different points. Many of those who form a majority on one question, may become the minority on a second, and an association dissimilar to either may constitute the majority on a third. Hence the necessity of molding and arranging all the particulars which are to compose the whole, in such a manner as to satisfy all the parties to the compact; and hence, also, an immense multiplication of difficulties and casualties in obtaining the collective assent to a final act. The degree of that multiplication must evidently be in a ratio to the number of particulars and the number of parties.

But every amendment to the Constitution, if once established, would be a single proposition, and might be brought forward singly. There would then be no necessity for management or compromise, in relation to any other point—no giving nor taking. The will of the requisite number would at once bring the matter to a decisive issue. And consequently, whenever nine, or rather ten States, were united in the desire of a particular amendment, that amendment must infallibly take place. There can, therefore, be no comparison between the facility of affecting an amendment, and that of establishing in the first instance a complete Constitution.

In opposition to the probability of subsequent amendments, it has been urged that the persons delegated to the administration of the national government will always be disinclined to yield up any portion of the authority of which they were once possessed. For my own part, I acknowledge a thorough conviction that any amendments which may, upon mature consideration, be thought useful, will be applicable to the organization of the government,

not to the mass of its powers; and on this account alone, I think there is no weight in the observation just started. I also think there is little weight in it on another account. The intrinsic difficulty of governing thirteen States at any rate, independent of calculations upon an ordinary degree of public spirit and integrity, will, in my opinion, constantly impose on the national rulers the necessity of a spirit of accommodation to the reasonable expectations of their constituents. But there is yet a further consideration, which proves beyond the possibility of a doubt, that the observation is futile. It is this, that the national rulers, whenever nine States concur, will have no option upon the subject. By the fifth article of the plan, the Congress will be obliged "on the application of the legislatures of two thirds of the States (which at present amount to nine), to call a convention for proposing amendments, which shall be valid, to all intents and purposes, as part of the Constitution, when ratified by the legislatures of three fourths of the States, or by conventions in three fourths thereof." The words of this article are peremptory. The Congress "shall call a convention." Nothing in this particular is left to the discretion of the body. And of consequence, all the declamation about the disinclination to a change vanishes in air. Nor however difficult it may be supposed to unite two thirds or three fourths of the State legislatures, in amendments which may affect local interests, can there be any room to apprehend any such difficulty in a union on points which are merely relative to the general liberty or security of the people. We may safely rely on the disposition of the State legislatures to erect barriers against the encroachments of the national authority.

If the foregoing argument is a fallacy, certain it is that I am myself deceived by it, for it is, in my concep-

tion, one of those rare instances in which a political truth can be brought to the test of a mathematical demonstration. Those who see the matter in the same light with me, however zealous they may be for amendments, must agree in the propriety of a previous adoption, as the most direct road to their own object.

The zeal for attempts to amend, prior to the establishment of the Constitution, must abate in every man who is ready to accede to the truth of the following observations of a writer equally solid and ingenious: "To balance a large state or society (says he), whether monarchical or republican, on general laws, is a work of so great difficulty, that no human genius, however comprehensive, is able, by the mere dint of reason and reflection, to effect it. The judgments of many must unite in the work; experience must guide their labor; time must bring it to perfection and the feeling of inconveniences must correct the mistakes which they inevitably fall into in their first trials and experiments." These judicious reflections contain a lesson of moderation to all the sincere lovers of the Union, and ought to put them upon their guard against hazarding anarchy, civil war, a perpetual alienation of the States from each other, and perhaps the military despotism of a victorious demagogue, in the pursuit of what they are not likely to obtain, but from time and experience. It may be in me a defect of political fortitude, but I acknowledge that I cannot entertain an equal tranquillity with those who affect to treat the dangers of a longer continuance in our present situation as imaginary. A nation, without a national government, is, in my view, an awful spectacle. The establishment of a Constitution, in time of profound peace, by the voluntary consent of a whole people, is a prodigy, to the completion of which I look forward with trembling anxiety. I can reconcile

it to no rules of prudence to let go the hold we now have, in so arduous an enterprise, upon seven out of the thirteen States, and after having passed over so considerable a part of the ground, to recommence the course. I dread the more the consequences of new attempts, because I know that powerful individuals, in this and in other States, are enemies to a general national government in every possible shape.

CHAPTER II

GENERAL FEATURES OF THE AMERICAN GOVERNMENT

4. The Federal System*

Alexis de Tocqueville, who wrote the immortal two-volume work entitled "Democracy in America" from which this selection is taken, traveled extensively in this country for about a year beginning in May, 1831. His pretext for coming was to make a study of prison conditions for the French Minister of Justice, but he was more interested in observing at first hand the workings of democracy. Upon his return to France he devoted two years to the preparation of the first volume and when it was published, he was immediately acclaimed as the greatest writer since Montesquieu. The work has gone through numerous editions and has been translated into nearly all languages. De Tocqueville's keen penetration into the essentials of American democracy, together with his impartiality and brilliant diction, give him the undisputed reputation of being one of the greatest observers of American institutions.

The Federal system was created with the intention of combining the different advantages which result from the magnitude and the littleness of nations; and a glance at the United States of America discovers the advantages which they have derived from its adoption.

In great centralized nations, the legislator is obligated to give a character of uniformity to the laws, which does not always suit the diversity of customs and of districts; as he takes no cognizance of special cases, he can only proceed upon general principles; and the population are

obliged to conform to the exigencies of the legislation, since the legislation cannot adapt itself to the exigencies and the customs of the population; which is a great cause of trouble and misery. This disadvantage does not exist in confederations; Congress regulates the principal measures of the national government; and all the details of the administration are reserved to the provincial legislatures. One can hardly imagine how much this division of sovereignty contributes to the well-being of each of the states which compose the Union. In these small communities, which are never agitated by the desire of aggrandizement or the care of self-defense, all public authority and private energy are turned towards internal improvements. The central government of each State, which is in immediate juxtaposition to the citizens, is daily apprised of the wants which arise in society; and new projects are proposed every year, which are discussed at town-meetings or by the legislature, and which are transmitted by the press to stimulate the zeal and to excite the interest of the citizens. This spirit of improvement is constantly alive in the American republics, without compromising their tranquillity; the ambition of power yields to the less refined and less dangerous desire for well-being. It is generally believed in America, that the existence and the permanence of the republican form of government in the New World depend upon the existence and the duration of the Federal system; and it is not unusual to attribute a large share of the misfortunes which have befallen the new States of South America to the injudicious erection of great republics, instead of a divided and confederate sovereignty.

It is incontestably true, that the tastes and the habits of republican government in the United States were first created in the townships and the provincial assemblies.

In a small State, like that of Connecticut, for instance, where cutting a canal or laying down a road is a great political question, where the State has no army to pay and no wars to carry on, and where much wealth or much honor cannot be given to the rulers, no form of government can be more natural or more appropriate than a republic. But it is this same republican spirit, it is these manners and customs of a free people, which have been created and nurtured in the different States, which must be afterwards applied to the country at large. The public spirit of the Union is, so to speak, nothing more than an aggregate or summary of the patriotic zeal of the separate provinces. Each citizen of the United States transports, so to speak, his attachment to his little republic into the common store of American patriotism. In defending the Union, he defends the increasing prosperity of his own State or county, the right of conducting its affairs, and the hope of causing measures of improvement to be adopted in it which may be favorable to his own interests; and these are motives which are wont to stir men more than the general interests of the country and the glory of the nation.

On the other hand, if the temper and the manners of the inhabitants especially fitted them to promote the welfare of a great republic, the federal system renders their task less difficult. The confederation of all the American States presents none of the ordinary inconveniences resulting from great agglomerations of men. The Union is a great republic in extent, but the paucity of objects for which its government acts assimilates it to a small State. Its acts are important, but they are rare. As the sovereignty of the Union is limited and incomplete, its exercise is not dangerous to liberty; for it does not excite those insatiable desires of fame and power which have proven

so fatal to great republics. As there is no common center to the country, great capital cities, colossal wealth, abject poverty, and sudden revolutions are alike unknown; and political passion, instead of spreading over the land like a fire on the prairies, spreads its strength against the interests and the individual passions of every State.

Nevertheless, tangible objects and ideas circulate throughout the Union as freely as in a country inhabited by one people. Nothing checks the spirit of enterprise. The government invites the aid of all who have talents or knowledge to serve it. Inside of the frontiers of the Union, profound peace prevails, as within the heart of some great empire; abroad, it ranks with the most powerful nations of the earth: two thousand miles of coast are open to the commerce of the world; and as it holds the keys of a New World, its flag is respected in the most remote seas. The Union is happy and free as a small people, and glorious and strong as a great nation.

When a legislator succeeds, after many efforts, in exercising an indirect influence upon the destiny of nations, his genius is lauded by mankind, whilst, in point of fact, the geographical position of the country which he is unable to change, a social condition which arose without his coöperation, manners and opinions which he cannot trace to their source, and an origin with which he is unacquainted, exercise so irresistible an influence over the courses of society, that he is himself borne away by the current after an ineffectual resistance. Like the navigator, he may direct the vessel which bears him, but he can neither change its structure, nor raise the winds, nor lull the waters which swell beneath him.

I have shown the advantages which the Americans derive from their federal system; it remains for me to point out the circumstances which enabled them to adopt it, as

its benefits cannot be enjoyed by all nations. The accidental defects of the federal system which originate in the laws may be corrected by the skill of the legislator, but there are evils inherent in the system which cannot be remedied by any effort. The people must therefore find in themselves the strength necessary to bear the natural imperfections of their government.

The most prominent evil of all federal systems is the complicated nature of the means they employ. Two sovereignties are necessarily in presence of each other. The legislator may simplify or equalize as far as possible the action of these two sovereignties, by limiting each of them to a sphere of authority accurately defined; but he cannot combine them into one, or prevent them from coming into collision at certain points. The federal system, therefore, rests upon a theory which is complicated, at the best, and which demands the daily exercise of a considerable share of discretion on the part of those it governs.

A proposition must be plain, to be adopted by the understanding of a people. A false notion which is clear and precise will always have more power in the world than a true principle which is obscure or involved. Hence it happens that parties, which are like small communities in the heart of the nation, invariably adopt some principle or name as a symbol, which very inadequately represents the end they have in view and the means which they employ, but without which they could neither act nor subsist. The governments which are founded upon a single principle or a single feeling, which is easily defined, are perhaps not the best, but they are unquestionably the strongest and the most durable in the world.

In examining the Constitution of the United States, which is the most perfect federal constitution that ever

existed, one is startled at the variety of information and the amount of discernment which it presupposes in the people whom it is meant to govern. The government of the Union depends almost entirely upon legal fiction; the Union is an ideal nation, which exists, so to speak, only in the mind, and whose limits and extent can only be discerned by the understanding.

After the general theory is comprehended, many difficulties remain to be solved in its application; for the sovereignty of the Union is so involved in that of the States, that it is impossible to distinguish its boundaries at the first glance. The whole structure of the government is artificial and conventional; and it would be ill adapted to a people which has not been long accustomed to conduct its own affairs, or to one in which the science of politics has not descended to the humblest classes of society. I have never been more struck by the good sense and the practical judgment of the Americans, than in the manner in which they elude the numberless difficulties resulting from their federal Constitution. I scarcely ever met with a plain American citizen who could not distinguish with surprising felicity the obligations created by the laws of Congress from those created by the laws of his own State, and who, after having discriminated between the matters which come under the cognizance of the Union and those which the local legislature is competent to regulate, could not point out the exact limit of the separate jurisdictions of the Federal courts and the tribunals of his State.

The Constitution of the United States resembles those fine creations of human industry which insure wealth and renown to their inventors, but which are profitless in other hands.

5. Separation of Powers *[1]

The principle of checks and balances embodied in the national constitution is explained here by Joseph Story, who was a member of the United States Supreme Court for thirty-four years. The recognition of this principle is one of the distinguishing features of the American Constitution. Story wrote these Commentaries, as he said in a letter to Kent, "with a sincere desire to commend, and to recommend the Constitution upon true, old, and elevated principles."

In surveying the general structure of the Constitution of the United States, we are naturally led to an examination of the fundamental principles on which it is organized for the purpose of carrying into effect the objects disclosed in the preamble. Every government must include within its scope, at least if it is to possess suitable stability and energy, the exercise of the three great powers upon which all governments are supposed to rest, namely, the executive, the legislative, and the judicial powers. The manner and extent in which these powers are to be exercised, and the functionaries in whom they are to be vested, constitute the great distinctions which are known in the forms of government. In absolute governments the whole executive, legislative, and judicial powers are, at least in their final result, exclusively confined to a single individual; and such a form of government is denominated a despotism, as the whole sovereignty of the state is vested in him. If the same powers are exclusively confided to a few persons, constituting a permanent sovereign council, the government may be appropriately denominated an absolute or despotic aristocracy. If they are exercised by the people at large in their original sovereign assemblies, the government is a pure and absolute democracy. But it is more common to find these

[1] Reprinted with the permission of Little, Brown and Company.

powers divided, and separately exercised by independent functionaries, the executive power by one department, the legislative by another, and the judicial power by a third; and in these cases the government is properly deemed a mixed one; a mixed monarchy, if the executive power is hereditary in several chieftains or families; and a mixed democracy or republic, if it is delegated by election, and is not hereditary. In mixed monarchies and aristocracies some of the functionaries of the legislative and judicial powers are, or at least may be, hereditary. But in a representative republic all power emanates from the people, and is exercised by their choice, and never extends beyond the lives of the individuals to whom it is intrusted. It may be intrusted for any shorter period; and then it returns to them again, to be again delegated by a new choice.

In the convention which framed the Constitution of the United States, the first resolution adopted by that body was, that "a national government ought to be established, consisting of a supreme legislative, judiciary, and executive." And from this fundamental proposition sprung the subsequent organization of the whole government of the United States. It is, then, our duty to examine and consider the grounds on which this proposition rests, since it lies at the bottom of all our institutions, State as well as national.

In the establishment of a free government, the division of the three great powers of government, the executive, the legislative and the judicial among different functionaries has been a favorite policy with patriots and statesmen. It has by many been deemed a maxim of vital importance, that these powers should forever be kept separate and distinct. And accordingly we find it laid down with emphatic care in the bill of rights of several of the

State constitutions. In the constitution of Massachusetts, for example, it is declared, that "in the government of this commonwealth, the legislative department shall never exercise the legislative and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them; to the end it may be a government of *laws* and not of men." Other declarations of a similar character are to be found in other State constitutions.

Montesquieu seems to have been the first who, with a truly philosophical eye, surveyed the political truth involved in this maxim in its full extent, and gave to it a paramount importance and value. As it is tacitly assumed, as a fundamental basis in the Constitution of the United States, in the distribution of its powers, it may be worth inquiry, what is the true nature, object, and extent of the maxim, and of the reasoning by which it is supported. The remarks of Montesquieu on this subject will be found in a professed commentary upon the constitution of England. "When," says he, "the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty, because apprehensions may arise lest the same monarch or senate should enact tyrannical laws, or execute them in a tyrannical manner. Again, there is no liberty, if the judiciary power be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control; for the judge would be the legislator. Were it joined to the executive power, the judge might behave with violence and oppression. There would be an end of everything were the same man, or the same body, whether of the nobles or of the people, to exercise these three powers, that of enacting laws, that of execut-

ing the public resolutions, and of trying the causes of individuals."

And The Federalist has with equal point and brevity remarked, that "the accumulation of all powers, legislative, executive and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may be justly pronounced the very definition of tyranny."

The general reasoning by which the maxim is supported, independently of the just right of the authority in its favor, seems entirely satisfactory. What is of far more value than any mere reasoning, experience has demonstrated it to be founded in a just view of the nature of government, and the safety and liberty of the people. And it is no small commendation of the Constitution of the United States, that instead of adopting a new theory, it has placed this practical truth as the basis of its organization. It has placed the legislative, executive, and judicial powers in different hands. It has, as we shall presently see, made their term of office and their organization different; and, for objects of permanent and paramount importance, has given to the judicial department a tenure of office during good behavior, while it has limited each of the others to a term of years.

But when we speak of a separation of the three great departments of government, and maintain that that separation is indispensable to public liberty, we are to understand this maxim in a limited sense. It is not meant to affirm that they must be kept wholly and entirely separate and distinct, and have no common link of connection or dependence, the one upon the other, in the slightest degree. The true meaning is, that the whole power of one of these departments should not be exercised by the same hands which possess the whole power

of either of the other departments; and that such exercise of the whole would subvert the principles of a free constitution. This has been shown with great clearness and accuracy by the authors of The Federalist.

It is proper to premise, that it is agreed on all sides that the powers belonging to one department ought not to be directly and completely administered by either of the other departments; and, as a corollary, that, in reference to each other, neither of them ought to possess, directly or indirectly, an overruling influence in the administration of their respective powers. Power, however, is of an encroaching nature, and it ought to be effectually restrained from passing the limits assigned to it. Having separated the three great departments by a broad line from each other, the difficult task remains to provide some practical means for the security of each against the meditated or occasional invasions of the others.

In the next place, in order to preserve in full vigor the constitutional barrier between each department, when they are entirely separated, it is obviously indispensable that each should possess equally, and in the same degree, the means of self-protection. Now, in point of theory, this would be almost impracticable, if not impossible; and in point of fact, it is well known that the means of self-protection in the different departments are immeasurably disproportionate. The judiciary is incomparably the weakest of either, and must forever, in a considerable measure, be subjected to the legislative power. And the latter has, and must have, a controlling influence over the executive power, since it holds at its own command all the resources by which a chief magistrate could make himself formidable. It possesses the power over the purse of the nation and the property of the people. It can grant or withhold supplies; it can levy or withdraw taxes; it

can unnerve the power of the sword by striking down the arm which wields it.

If, then, the legislative power possesses a decided preponderance of influence over either or both of the others, and if, in its own separate structure, it furnishes no effectual security for the others, or for its own abstinence from usurpations, it will not be sufficient to rely upon a mere constitutional division of the powers to insure our liberties.

What remedy, then, can be proposed adequate for the exigency? It has been suggested that an appeal to the people, at stated times, might redress any inconvenience of this sort. But, if these be frequent, it will have a tendency to lessen that respect for, and confidence in, the stability of our institutions, which is so essential to their salutary influence. If it be true that all governments rest on opinion, it is no less true that the strength of opinion in each individual, and its practical influence on his conduct, depend much upon the number which he supposes to have entertained the same opinion. There is, too, no small danger in disturbing the public tranquillity by a frequent recurrence to questions respecting the fundamental principles of government.

If, then, occasional or periodical appeals to the people would not afford an effectual barrier against the inroads of the legislature upon the other departments of the government, it is manifest that resort must be had to some contrivances in the interior structure of the government itself, which shall exert a constant check, and preserve the mutual relations of each with the other. Upon a thorough examination of the subject, it will be found that this can be best accomplished, if not solely accomplished, by an occasional mixture of the powers of each department with that of the others, while the separate existence and con-

stitutional independence of each are fully provided for. Each department should have a will of its own, and the members of each should have but a limited agency in the acts and appointments of the members of the others. Each should have its own independence secured beyond the power of being taken away by either, or both of the others. But at the same time the relations of each to the other should be so strong, that there should be a mutual interest to sustain and protect each other. There should not only be constitutional means, but personal motives, to resist encroachments of one, or either of the others. Thus, ambition would be made to counteract ambition; the desire of power to check power; and the pressure of interest to balance an opposing interest.

There seems no adequate method of producing this result but by a partial participation of each in the powers of the other; and by introducing into every operation of the government, in all its branches, a system of checks and balances, on which the safety of free institutions has ever been found essentially to depend. Thus, for instance, a guard against rashness and violence in legislation has often been found, by distributing the power among different branches, each having a negative check upon the other. A guard against the inroads of the legislative power upon the executive has been in like manner applied, by giving the latter a qualified negative upon the former; and a guard against the executive influence and patronage, or unlawful exercise of authority, by requiring the concurrence of a select council, or a branch of the legislature, in appointments to office, and in the discharge of other high functions, as well as by placing the command of a revenue in other hands.

The usual guard, applied for the security of the judicial department, has been in the tenure of office of the judges,

who commonly are to hold office during good behavior. But this is obviously an inadequate provision, while the legislature is intrusted with a complete power over the salaries of the judges, and over the jurisdiction of the courts, so that they can alter or diminish them at pleasure. Indeed, the judiciary is naturally, and almost necessarily the weakest department.

How far the Constitution of the United States, in the actual separation of these departments, and the occasional mixtures of some of the powers of each, has accomplished the objects of the great maxim which we have been considering, will appear more fully when a survey is taken of the particular powers confided to each department. But the true and only test must, after all, be experience, which corrects at once the errors of theory and fortifies and illustrates the eternal judgments of nature.

6. Republican Form of Government

James Madison is often referred to as the "Father of the Constitution." As the most influential member of the Constitutional Convention of 1787, as Secretary of State, and as President, he made great contributions to American government. This selection appearing in The Federalist is one of his most famous articles.

The first question that offers itself is, whether the general form and aspect of the government be strictly republican. It is evident that no other form would be reconcilable with the genius of the people of America; with the fundamental principles of the Revolution; or with that honorable determination which animates every votary of freedom, to rest all our political experiments on the capacity of mankind for self-government. If the plan of the convention, therefore, be found to depart from the

republican character, its advocates must abandon it as no longer defensible.

What, then, are the distinctive characters of the republican form? Were an answer to this question to be sought, not by recurring to principles, but in the application of the term by political writers, to the constitutions of different States, no satisfactory one would ever be found. Holland, in which no particle of the supreme authority is derived from the people, has passed almost universally under the domination of a republic. The same title has been bestowed on Venice, where absolute power over the great body of the people is exercised, in the most absolute manner, by a small body of hereditary nobles. Poland, which is a mixture of aristocracy and of monarchy in their worst forms, has been dignified with the same appellation. The government of England, which has one republican branch only, combined with an hereditary aristocracy and monarchy, has, with equal impropriety, been frequently placed on the list of republics. These examples, which are nearly as dissimilar to each other as to a genuine republic, show the extreme inaccuracy with which the term has been used in political disquisitions.

If we resort for a criterion to the different principles on which different forms of government are established, we may define a republic to be, or at least may bestow that name on, a government which derives all its powers directly or indirectly from the great body of the people, and is administered by persons holding their offices during pleasure, for a limited period, or during good behavior. It is essential to such a government that it be derived from the great body of the society, not from an inconsiderable proportion, or a favored class of it; otherwise a handful of tyrannical nobles, exercising their op-

pressions by a delegation of their powers, might aspire to the rank of republicans, and claim for their government the honorable title of republic. It is sufficient for such a government that the persons administering it be appointed, either directly or indirectly, by the people; and that they hold their appointments by either of the tenures just specified; otherwise every government in the United States, as well as every other popular government that has been or can be well organized or well executed, would be degraded from the republican character. According to the constitution of every State in the Union, some or other of the officers of government are appointed indirectly only by the people. According to most of them, the chief magistrate himself is so appointed. And according to one, this mode of appointment is extended to one of the coördinate branches of the legislature. According to all the constitutions, also, the tenure of the highest offices is extended to a definite period, and in many instances, both within the legislative and executive departments, to a period of years. According to the provisions of most of the constitutions, again, as well as according to the most respectable and received opinions on the subject, the members of the judiciary department are to retain their offices by the firm tenure of good behavior.

On comparing the Constitution planned by the convention with the standard here fixed, we perceive at once that it is, in the most rigid sense, conformable to it. The House of Representatives, like that of one branch at least of all the State legislatures, is elected immediately by the great body of the people. The Senate, like the present Congress, and the Senate of Maryland, derives its appointment indirectly from the people. The President is indirectly derived from the choice of the people, ac-

cording to the example in most of the States. Even the judges, with all other officers of the Union, will, as in the several States, be the choice, though a remote choice, of the people themselves. The duration of the appointments is equally conformable to the republican standard, and to the model of State constitutions. The House of Representatives is periodically elective, as in all the States; and for the period of two years, as in the State of South Carolina. The Senate is elective, for the period of six years; which is but one year more than the period of the Senate of Maryland, and but two more than that of the Senates of New York and Virginia. The President is to continue in office for the period of four years; as in New York and Delaware the chief magistrate is elected for three years, and in South Carolina for two years. In the other States the election is annual. In several of the States, however, no constitutional provision is made for the impeachment of the chief magistrate. And in Delaware and Virginia he is not impeachable till out of office. The President of the United States is impeachable at any time during his continuance in office. The tenure by which the judges are to hold their places, is as it unquestionably ought to be, that of good behavior. The tenure of the ministerial offices generally, will be a subject of legal regulation, conformably to the reason of the case and the example of the State constitutions.

Could any further proof be required of the republican complexion of this system, the most decisive one might be found in its absolute prohibition of titles of nobility, both under the federal and the State governments; and in its express guaranty of the republican form to each of the latter.

"But it was not sufficient," say the adversaries of the proposed Constitution, "for the convention to adhere to

the republican form. They ought, with equal care, to have preserved the federal form, which regards the Union as a Confederacy of sovereign states; instead of which, they have framed a national government, which regards the Union as a consolidation of the States." And it is asked by what authority this bold and radical innovation was undertaken? The handle which has been made of this objection requires that it should be examined with some precision.

Without inquiring into the accuracy of the distinction on which the objection is founded, it will be necessary to a just estimate of its force, first, to ascertain the real character of the government in question; secondly, to inquire how far the convention were authorized to propose such a government; and thirdly, how far the duty they owed to their country could supply any defect of regular authority.

First.—In order to ascertain the real character of the government, it may be considered in relation to the foundation on which it is to be established; to the sources from which its ordinary powers are to be drawn; to the operation of those powers; to the extent of them; and to the authority by which future changes in the government are to be introduced.

On examining the first relation, it appears, on one hand, that the Constitution is to be founded on the assent and ratification of the people of America, given by deputies elected for the purpose; but, on the other, that this assent and ratification is to be given by the people, not as individuals composing one entire nation, but as composing the distinct and independent States to which they respectively belong. It is to be the assent and ratification of the several States, derived from the supreme authority in each State,—the authority of the peo-

ple themselves. The act, therefore, establishing the Constitution, will not be a national, but a federal act.

That it will be a federal and not a national act, as these terms are understood by the objectors; the act of the people, as forming so many independent Sates, not as forming one aggregate nation, is obvious from this single consideration, that it is to result neither from the decision of a majority of the people of the Union, nor from that of the majority of the States. It must result from the unanimous assent of the several States that are parties of it, differing no otherwise from their ordinary assent than in its being expressed, not by the legislative authority, but by that of the people themselves. Were the people regarded in this transaction as forming one nation, the will of the majority of the whole people of the United States would bind the minority, in the same manner as the majority in each State must bind the minority; and the will of the majority must be determined either by a comparison of the individual votes, or by considering the will of the majority of the States as evidence of the will of a majority of the people of the United States. Neither of these rules has been adopted. Each State, in ratifying the Constitution, is considered as a sovereign body, independent of all others, and only to be bound by its own voluntary act. In this relation, then, the new Constitution will, if established, be a federal, and not a national constitution.

The next relation is, to the sources from which the ordinary powers of government are to be derived. The House of Representatives will derive its powers from the people of America; and the people will be represented in the same proportion, and on the same principle, as they are in the legislature of a particular State. So far the government is national, not federal. The Senate, on the

other hand, will derive its powers from the States, as political and coequal societies; and these will be presented on the principle of equality in the Senate, as they now are in the existing Congress. So far the government is federal, not national. The executive power will be derived from a very compound source. The immediate election of the President is to be made by the States in their political characters. The votes allotted to them are in a compound ratio, which considers them partly as distinct and coequal societies, partly as unequal members of the same society. The eventual election, again, is to be made by that branch of the legislature which consists of the national representatives; but in this particular act they are to be thrown into the form of individual delegations, from so many distinct and coequal bodies politic. From this aspect of the government, it appears to be of a mixed character, presenting at least as many federal as national features.

The difference between a federal and national government, as it relates to the operation of the government, is supposed to consist in this, that in the former the powers operate on the political bodies composing the Confederacy, in their political capacities; in the latter, on the individual citizens composing the nation, in their individual capacities. On trying the Constitution by this criterion, it falls under the national, not the federal character; though perhaps not so completely as has been understood. In several cases, and particularly in the trial of controversies to which States may be parties, they must be viewed and proceeded against in their collective and political capacities only. So far the national countenance of the government on this side seems to be disfigured by a few federal features. But this blemish is perhaps unavoidable in any plan; and the operation of

the government on the people, in their individual capacities, in its ordinary and most essential proceedings, may, on the whole, designate it, in this relation, a national government.

But if the government be national with regard to the operation of its powers, it changes its aspect again when we contemplate it in relation to the extent of its powers. The idea of a national government involves in it, not only an authority over the individual citizens, but an indefinite supremacy over all persons and things, so far as they are objects of lawful government. Among a people consolidated into one nation, this supremacy is completely vested in the national legislature. Among communities united for particular purposes, it is vested partly in the general and partly in the municipal legislatures. In the former case, all local authorities are subordinate to the supreme; and may be controlled, directed, or abolished by it at pleasure. In the latter, the local or municipal authorities form distinct and independent portions of the supremacy, no more subject, within their respective spheres, to the general authority, than the general authority is subject to them, within its own sphere. In this relation, then, the proposed government cannot be deemed a national one; since its jurisdiction extends to certain enumerated objects only, and leaves to the several States a residuary and inviolable sovereignty over all other objects. It is true that in controversies relating to the boundary between the two jurisdictions, the tribunal which is ultimately to decide, is to be established under the general government. But this does not change the principle of the case. The decision is to be impartially made, according to the rules of the Constitution; and all the usual and most effectual precautions are taken to secure this impartiality. Some such tribunal is clearly

essential to prevent an appeal to the sword and a dissolution of the compact; and that it ought to be established under the general rather than under the local governments, or, to speak more properly, that it could be safely established under the first alone, is a position not likely to be combated.

If we try the Constitution by its last relation to the authority by which amendments are to be made, we find it neither national nor wholly federal. Were it wholly national, the supreme and ultimate authority would reside in the majority of the people of the Union; and this authority would be competent at all times, like that of a majority of every national society, to alter or abolish its established government. Were it wholly federal, on the other hand, the concurrence of each State in the Union would be essential to every alteration that would be binding on all. The mode provided by the plan of the convention is not founded on either of these principles. In requiring more than a majority, and particularly in computing the proportion by States, not by citizens, it departs from the national and advances towards the federal character; in rendering the concurrence of less than the whole number of States sufficient, it loses again the federal and partakes of the national character.

The proposed Constitution, therefore, is, in strictness, neither a national nor a federal Constitution, but a composition of both. In its foundation it is federal, not national; in the sources from which the ordinary powers of the government are drawn, it is partly federal and partly national; in the operation of these powers, it is national, not federal; in the extent of them, again, it is federal, not national; and, finally, in the authoritative mode of introducing amendments, it is neither wholly federal nor wholly national.

7. Freedom of Religion [1]

The Statute of Virginia for Religious Freedom, enacted in 1786, was the work of Thomas Jefferson, and one of his claims to immortality. Before his death he directed that the inscription on his tombstone should refer to him as the author of the Declaration of Independence and of the Virginia Statute for Religious Freedom because he felt that these two documents were his most lasting contributions to his country. This statute was the first ever passed by a popular assembly giving perfect freedom of conscience. The text of the document is exactly as it was written by Jefferson without omitting those minor portions struck out in the bill.

Well aware that the opinions and belief of men depend not on their own will, but follow involuntarily the evidence proposed to their minds; that Almighty God hath created the mind free, and manifested his supreme will that free it shall remain by making it altogether insusceptible of restraint; that all attempts to influence it by temporal punishments or burdens, or by civil incapacitations, tend only to beget habits of hypocrisy and meanness, and are a departure from the plan of the Holy Author of our religion, who being Lord both of body and mind, yet chose not to propagate it by coercions on either, as was in his Almighty power to do, but to extend its influence on reason alone; that the impious presumption of legislators and rulers, civil as well as ecclesiastical, who, being themselves but fallible and uninspired men, have assumed dominion over the faiths of others, setting up their own opinions and modes of thinking as the only true and infallible; and as such endeavoring to impose them on others, hath established and maintained false religions over the greatest part of the world, and through all time: that to compel a man to furnish contributions of money

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for the propagation of opinions which he disbelieves and abhors, is sinful and tyrannical; that even the forcing him to support this or that teacher of his own religious persuasion, is depriving him of the comfortable liberty of giving his contributions to the particular pastor whose morals he would make his pattern, and whose powers he feels most persuasive to righteousness, and is withdrawing from the ministry those temporary rewards, which, proceeding from an approbation of their personal conduct, are an additional incitement to earnest and unremitting labors for the instruction of mankind; that our civil rights have no dependence on our religious opinions, any more than our opinions in physics or geometry; that, therefore, the proscribing any citizen as unworthy the public confidence by laying upon him an incapacity of being called to offices of trust and emolument, unless he profess or renounce this or that religious opinion, is depriving him injuriously of those privileges and advantages to which, in common with his fellow-citizens, he has a natural right; that it tends also to corrupt the principles of that very religion it is meant to encourage, by bribing, with a monopoly of worldly honors and emoluments, those who will externally profess and conform to it; that though indeed these are criminal who do not withstand such temptation, yet neither are those innocent who lay the bait in their way; that the opinions of men are not the object of civil government, nor under its jurisdiction; that to suffer the civil magistrate to intrude his powers into the field of opinion and to restrain the profession or propagation of principles, on the supposition of their ill tendency is a dangerous fallacy, which at once destroys all religious liberty, because he being of course judge of that tendency will make his opinions the rule of judgment, and approve or condemn the sentiments of others

only as they shall square with or differ from his own; that it is time enough for the rightful purposes of civil government for its officers to interfere when principles break out into overt acts against peace and good order; and finally, that truth is great and will prevail if left to herself; that she is the proper and sufficient antagonist to error, and has nothing to fear from the conflict unless by human interposition disarmed of her natural weapons, free argument and debate; errors ceasing to be dangerous when it is permitted freely to contradict them.

WE, the General Assembly of Virginia, do enact, That no man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced, restrained, molested, or burthened in his body or goods, nor shall otherwise suffer, on account of his religious opinions or belief; but that all men shall be free to profess, and by argument to maintain, their opinions in matters of religion, and that the same shall in no wise diminish, enlarge, or affect their civil capacities.

And though we know well that this Assembly, elected by the people for the ordinary purposes of legislation only, have no power to restrain the acts of succeeding Assemblies, constituted with powers equal to our own, and that therefore to declare this act irrevocable would be of no effect in law; yet we are free to declare, and do declare, that the rights hereby asserted, are of the natural rights of mankind, and that if any act shall be hereafter passed to repeal the present or to narrow its operation, such act will be an infringement of natural right.

8. Freedom of Speech *

During the World War Congress passed the Espionage Act and the Sedition Act which put great restrictions upon individual freedom. These laws were upheld, however, by the

Supreme Court in a series of cases, the most interesting of these being the Schenck case given below. Justice Holmes, who delivered the opinion of a unanimous court in this case, has been on the Supreme Court bench since 1902 and is recognized today as one of the greatest judges the court has ever had.

This is an indictment in three counts. The defendants were found guilty on all the counts. They set up the 1st Amendment to the Constitution, forbidding Congress to make any law abridging the freedom of speech or of the press, and, bringing the case here on that ground, have argued some other points also of which we must dispose.

The document in question, upon its first printed side, recited the 1st section of the 13th Amendment, said that the idea embodied in it was violated by the Conscription Act, and that a conscript is little better than a convict. In impassioned language it intimated that conscription was despotism in its worst form and a monstrous wrong against humanity, in the interest of Wall Street's chosen few. It said: "Do not submit to intimidation;" but in form at least confined itself to peaceful measures, such as a petition for the repeal of the act. The other and later printed side of the sheet was headed "Assert Your Rights." It stated reasons for alleging that anyone violated the Constitution when he refused to recognize "your right to assert your opposition to the draft," and went on: "If you do not assert and support your rights, you are helping to deny or disparage rights which it is the solemn duty of all citizens and residents of the United States to retain." It described the arguments on the other side as coming from cunning politicians and a mercenary capitalist press, and even silent consent to the Conscription Law as helping to support an infamous conspiracy. It denied the power to send our citizens away to foreign shores to shoot up the people of other lands, and added that

words could not express the condemnation such cold-blooded ruthlessness deserves, etc., etc., winding up, "You must do your share to maintain, support, and uphold the rights of the people of this country." Of course the document would not have been sent unless it had been intended to have some effect, and we do not see what effect it could be expected to have upon persons subject to the draft except to influence them to obstruct the carrying of it out. The defendants do not deny that the jury might find against them on this point.

But it is said, suppose that that was the tendency of this circular, it is protected by the 1st Amendment to the Constitution. Two of the strongest expressions are said to be quoted respectively from well-known public men. It well may be that the prohibition of laws abridging the freedom of speech is not confined to previous restraints, although to prevent them may have been the main purpose, as intimated in Patterson v. Colorado, 205 U. S. 454. We admit that in many places and in ordinary times the defendants, in saying all that was said in the circular, would have been within their constitutional rights. But the character of every act depends upon the circumstances in which it is done. The most stringent protection of free speech would not protect a man in falsely shouting fire in a theater, and causing a panic. It does not even protect a man from an injunction against uttering words that may have all the effect of force. The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree. When a nation is at war many things that might be said in time of peace are such a hindrance to its effort that their ut-

terance will not be endured so long as men fight, and that no court could regard them as protected by any constitutional right. It seems to be admitted that if an actual obstruction of the recruiting service were proved, liability for words that produced that effect might be enforced. The Statute of 1917, in section 4, punishes conspiracies to obstruct as well as actual obstruction. If the act (speaking, or circulating a paper), its tendency and the intent with which it is done, are the same, we perceive no ground for saying that success alone warrants making the act a crime.

9. Due Process of Law * [1]

The constitutional requirement found in the Fifth and Fourteenth Amendments that no person shall be deprived of "life, liberty, or property without due process of law" has resulted in more litigation than any other part of the national Constitution. This explanation of the subject was written by Thomas M. Cooley, who served as Professor of Law at the University of Michigan and as Chief Justice of the Michigan Supreme Court. Few men have contributed as much as Judge Cooley to the development of the American idea of due process.

The protection of the subject in the free enjoyment of his life, his liberty, and his property, except as they might be declared by the judgment of his peers or the law of the land to be forfeited, was guaranteed by the twenty-ninth chapter of Magna Charta, "which alone," says Sir William Blackstone, "would have merited the title that it bears of the *Great* Charter." The people of the American States, holding the sovereignty in their own hands, have no occasion to exact pledges from any one for a due observance of individual rights; but the aggressive tendency of power is such, that they have

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deemed it of no small importance, that, in framing the instruments under which their governments are to be administered by their agents, they should repeat and re-enact this guaranty, and thereby adopt it as a principle of constitutional protection. In some form of words, it is to be found in each of the State constitutions: and though verbal differences appear in the several provisions, no change in language, it is thought, has in any case been made with a view to essential change in legal effect; and the differences in phraseology will not, therefore, be of importance in our discussion. Indeed, the language employed is generally nearly identical, except that the phrase "due process of law" is sometimes used, sometimes "law of the land," and in some cases both; but the meaning is the same in every case. And, by the fourteenth amendment, the guaranty is now incorporated in the Constitution of the United States.

If now we shall ascertain the sense in which the phrases "due process of law" and "the law of the land" are employed in the several constitutional provisions which we have referred to, when the protection of rights in property is had in view, we shall be able, perhaps, to indicate the rule, by which the proper conclusion may be reached in those cases in which legislative action is objected to, as not being "the law of the land;" or judicial or ministerial action is contested as not being "due process of law," within the meaning of these terms as the Constitution employs them.

If we examine such definitions of these terms as are met with in the reported cases, we shall find them so various that some difficulty must arise in fixing upon which shall be accurate, complete in itself, and at the same time appropriate in all the cases. The diversity of definition is certainly not surprising, when we consider the

diversity of cases for the purposes of which it has been attempted, and reflect that a definition that is sufficient for one case and applicable to its facts may be altogether insufficient or entirely inapplicable in another.

Perhaps no definition is more often quoted than that given by Mr. Webster in the Dartmouth College Case: "By the law of the land is most clearly intended the general law; a law which hears before it condemns; which proceeds upon inquiry, and renders judgment only after trial. The meaning is that every citizen shall hold his life, liberty, property, and immunities, under the protection of the general rules which govern society. Everything which may pass under the form of an enactment is not therefore to be considered the law of the land."

The principles, then, upon which the process is based are to determine whether it is "due process" or not, and not any considerations of mere form. Administrative and remedial process may be changed from time to time, but only with due regard to the landmarks established for the protection of the citizen. When the government through its established agencies interferes with the title to one's property, or with his independent enjoyment of it, and its action is called in question as not in accordance with the law of the land, we are to test its validity by those principles of civil liberty and constitutional protection which have become established in our system of laws, and not generally by rules that pertain to forms of procedure merely. In judicial proceedings the law of the land requires a hearing before condemnation, and judgment before dispossession; but when property is appropriated by the government to public uses, or the legislature interferes to give direction to its title through remedial statutes, different considerations from those which regard the controversies between man and man must prevail, different

proceedings are required, and we have only to see whether the interference can be justified by the established rules applicable to the special case. Due process of law in each particular case means, such an exertion of the powers of government as the settled maxims of law permit and sanction, and under such safeguards for the protection of individual rights as those maxims prescribe for the class of cases to which the one in question belongs.

10. The Nature of the Constitution *

Webster is probably the greatest orator America has ever produced, but his fame also depends upon his contributions to American constitutional law. In referring to the famous Webster-Hayne debate from which this selection was taken, Chancellor Kent said that "by means of these discussions and the master genius who guided them, constitutional law was rescued from the archives of our tribunals and the libraries of our lawyers and placed under the eye and submitted to the judgment of the American people." Webster's grandeur of style, and incisive reasoning power can hardly be excelled and in his argument here for the supremacy of the Constitution we are given a classic statement which a hundred years have served to strengthen.

The people, then, Sir, erected this government. They gave it a Constitution, and in that Constitution they have enumerated the powers which they bestow on it. They have made it a limited government. They have defined its authority. They have restrained it to the exercise of such powers as are granted; and all others, they declare, are reserved to the States or the people. But, Sir, they have not stopped here. If they had, they would have accomplished but half their work. No definition can be so clear, as to avoid possibility of doubt; no limitation so precise, as to exclude all uncertainty. Who, then, shall construe this grant of the people? Who shall interpret

their will, where it may be supposed they have left it doubtful? With whom do they repose this ultimate right of deciding on the powers of the government? Sir, they have settled all this in the fullest manner. They have left it with the government itself, in its appropriate branches. Sir, the very chief end, the main design, for which the whole Constitution was framed and adopted, was to establish a government that should not be obliged to act through State agency, or depend on State opinion and State discretion. The people had had quite enough of that kind of government under the Confederation. Under that system, the legal action, the application of law to individuals, belonged exclusively to the States. Congress could only recommend; their acts were not of binding force, till the States had adopted and sanctioned them. Are we in that condition still? Are we yet at the mercy of the State discretion and State construction? Sir, if we are, then vain will be our attempt to maintain the Constitution under which we sit.

But, Sir, the people have wisely provided, in the Constitution itself, a proper, suitable mode and tribunal for settling questions of constitutional law. There are in the Constitution grants of powers to Congress, and restrictions of these powers. There are, also, prohibitions on the States. Some authority must, therefore, necessarily exist, having the ultimate jurisdiction to fix and ascertain the interpretation of these grants, restrictions, and prohibitions. The Constitution has itself pointed out, ordained, and established that authority. How has it accomplished this great and essential end? By declaring, Sir, that "the Constitution, and the laws of the United States made in pursuance thereof, shall be the supreme law of the land, anything in the constitution or laws of any State to the contrary notwithstanding."

This, Sir, was the first great step. By this the supremacy of the Constitution and the laws of the United States is declared. The people so will it. No State law is to be valid which comes in conflict with the Constitution, or any law of the United States passed in pursuance of it. But who shall decide this question of interference? To whom lies the last appeal? This, Sir, the Constitution itself decides also, by declaring, "that the judicial power shall extend to all cases arising under the Constitution and laws of the United States." These two provisions cover the whole ground. They are, in truth, the keystone of the arch! With these it is a government; without them it is a confederation. In pursuance of these clear and express provisions, Congress established, at its very first session, in the judicial act, a mode for carrying them into full effect, and for bringing all questions of constitutional power to the final decision of the Supreme Court. It then, Sir, became a government. It then had the means of self-protection; and but for this, it would, in all probability, have been now among things which are past. Having constituted the government, and declared its powers, the people have further said, that, since somebody must decide on the extent of these powers, the government shall itself decide; subject, always, like other popular governments, to its responsibility to the people. And now, Sir, I repeat, how is it that a State legislature acquires any power to interfere? Who, or what, gives them the right to say to the people, "We, who are your agents and servants for one purpose, will undertake to decide, that your other agents and servants, appointed by you for another purpose, have transcended the authority you gave them!" The reply would be, I think, not impertinent,—"Who made you a judge over another's servants? To their own masters they stand or fall."

Sir, I deny this power of State legislatures altogether. It cannot stand the test of examination. Gentlemen may say, that, in an extreme case, a State government might protect the people from intolerable oppression. Sir, in such a case, the people might protect themselves, without the aid of the State governments. Such a case warrants revolution. It must make, when it comes, a law for itself. A nullifying act of a State legislature cannot alter the case, nor make resistance any more lawful. In maintaining these sentiments, Sir, I am but asserting the rights of the people. I state what they have declared, and insist on their right to declare it. They have chosen to repose this power in the general government, and I think it my duty to support it, like other constitutional powers.

For myself, Sir, I do not admit the competency of South Carolina, or any other State, to prescribe my constitutional duty; or to settle, between me and the people, the validity of laws of Congress, for which I have voted. I decline her umpirage. I have not sworn to support the Constitution according to her construction of its clauses. I have not stipulated, by my oath of office or otherwise, to come under any responsibility, except to the people, and those whom they have appointed to pass upon the question, whether laws, supported by my votes, conform to the Constitution of the country. And, Sir, if we look to the general nature of the case, could anything have been more preposterous, than to make a government for the whole Union, and yet leave its powers subject, not to one interpretation, but to thirteen or twenty-four interpretations? Instead of one tribunal, established by all, responsible to all, with power to decide for all, shall constitutional questions be left to four-and-twenty popular bodies, each at liberty to decide for itself, and none bound to respect the decisions of others; and each at liberty, too, to give a new

construction on every new election of its own members? Would anything, with such a principle in it, or rather with such a destitution of all principle, be fit to be called a government? No, Sir. It should not be denominated a Constitution. It should be called, rather, a collection of topics for everlasting controversy; heads of debate for a disputatious people. It would not be a government. It would not be adequate to any practical good, or fit for any country to live under.

To avoid all possibility of being misunderstood, allow me to repeat again, in the fullest manner, that I claim no powers for the government by forced or unfair construction. I admit that it is a government of strictly limited powers; of enumerated, specified, and particularized powers; and that whatsoever is not granted, is withheld. But notwithstanding all this, and however the grant of powers may be expressed, its limit and extent may yet, in some cases, admit of doubt; and the general government would be good for nothing, it would be incapable of long existing, if some mode had not been provided in which those doubts, as they should arise, might be peaceably, but authoritatively, solved.

Let it be remembered, that the Constitution of the United States is not unalterable. It is to continue in its present form no longer than the people who established it shall choose to continue it. If they shall become convinced that they have made an injudicious or inexpedient partition and distribution of power between the State governments and the general government, they can alter that distribution at will.

If anything be found in the national Constitution, either by original provision or subsequent interpretation, which ought not to be in it, the people know how to get rid of it. If any construction, unacceptable to them, be

established, so as to become practically a part of the Constitution, they will amend it, at their own sovereign pleasure. But while the people choose to maintain it as it is, while they are satisfied with it, and refuse to change it, who has given, or who can give, to the State legislatures a right to alter it, either by interference, construction, or otherwise? Gentlemen do not seem to recollect that the people have any power to do anything for themselves. They imagine there is no safety for them, any longer than they are under the close guardianship of the State legislatures. Sir, the people have not trusted their safety, in regard to the general Constitution, to these hands. They have required other security, and taken other bonds. They have chosen to trust themselves, first, to the plain words of the instrument, and to such construction as the government themselves, in doubtful cases, should put on their own powers, under their oaths of office, and subject to their own State governments with a similar power. Secondly, they have reposed their trust in the efficacy of frequent elections, and in their own power to remove their own servants and agents whenever they see cause. Thirdly, they have reposed trust in the judicial power, which, in order that it might be trustworthy, they have made as respectable, as disinterested, and as independent as was practicable. Fourthly, they have seen fit to rely, in case of necessity, or high expediency, on their known and admitted power to alter or amend the Constitution, peaceably and quietly, whenever experience shall point out defects or imperfections. And, finally, the people of the United States have at no time, in no way, directly or indirectly, authorized any State legislature to construe, or interpret their high instrument of government; much less, to interfere, by their own power, to arrest its course and operation.

If, Sir, the people in these respects had done otherwise than they have done, their Constitution would neither have been preserved, nor would it have been worth preserving. And if its plain provisions shall now be disregarded, and these new doctrines interpolated in it, it will become as feeble and helpless a being as its enemies, whether early or more recent, could possibly desire. It will exist in every State but as a poor dependent on State permission. It must borrow leave to be; and will be, no longer than State pleasure, or State discretion, sees fit to grant the indulgence, and to prolong its poor existence.

But, Sir, although there are fears, there are hopes also, The people have preserved this, their own chosen Constitution, for forty years, and have seen their happiness, prosperity, and renown grow with its growth, and strengthen with its strength. They are now, generally, strongly attached to it. Overthrown by direct assault, it cannot be; evaded, undermined, nullified, it will not be, if we, and those who shall succeed us here, as agents and representatives of the people, shall conscientiously and vigilantly discharge the two great branches of our public trust, faithfully to preserve, and wisely to administer it.

Mr. President, I have thus stated the reasons of my dissent to the doctrines which have been advanced and maintained. I am conscious of having detained you and the Senate much too long. I was drawn into the debate with no previous deliberation, such as is suited to the discussion of so grave and important a subject. But it is a subject of which my heart is full, and I have not been willing to suppress the utterance of its spontaneous sentiments. I cannot, even now, persuade myself to relinquish it, without expressing once more my deep conviction, that, since it respects nothing less than the Union of the States, it is of most vital and essential importance to the public

happiness. I profess, Sir, in my career hitherto, to have kept steadily in view the prosperity and honor of the whole country, and the preservation of our Federal Union. It is to that Union we owe our safety at home, and our consideration and dignity abroad. It is to that Union that we are chiefly indebted for whatever makes us most proud of our country. That Union we reached only by the discipline of our virtues in the severe school of adversity. It had its origin in the necessities of disordered finance, prostrate commerce, and ruined credit. Under its benign influences, these great interests immediately awoke, as from the dead, and sprang forth with newness of life. Every year of its duration has teemed with fresh proofs of its utility and its blessings; and although our territory has stretched out wider and wider, and our population spread farther and farther, they have not outrun its protection or its benefits. It has been to us all a copious fountain of national, social, and personal happiness.

I have not allowed myself, Sir, to look beyond the Union, to see what might lie hidden in the dark recess behind. I have not coolly weighed the chances of preserving liberty when the bonds that unite us together shall be broken asunder. I have not accustomed myself to hang over the precipice of disunion, to see whether, with my short sight, I can fathom the depth of the abyss below; nor could I regard him as a safe counsellor in the affairs of this government, whose thoughts should be mainly bent on considering, not how the Union may be best preserved, but how tolerable might be the condition of the people when it should be broken up and destroyed. While the Union lasts, we have high, exciting, gratifying prospects spread out before us, for us and our children. Beyond that I seek not to penetrate the veil. God grant that in

my day, at least, that curtain may not rise! God grant that on my vision never may be opened what lies behind! When my eyes shall be turned to behold for the last time the sun in heaven, may I not see him shining on the broken and dishonored fragments of a once glorious Union; on States dissevered, discordant, belligerent; on a land rent with civil feuds, or drenched, it may be, in fraternal blood! Let their last feeble and lingering glance rather behold the gorgeous ensign of the republic, now known and honored throughout the earth, still full high advanced, its arms and trophies streaming in their original luster, not a stripe erased or polluted, nor a single star obscured, bearing for its motto, no such miserable interrogatory as "What is all this worth?" nor those other words of delusion and folly, "Liberty first and Union afterwards;" but everywhere, spread all over in characters of living light, blazing on all its ample folds, as they float over the sea and over the land, and in every wind under the whole heavens, that other sentiment, dear to every true American heart,—Liberty and Union, now and for ever, one and inseparable!

11. Growth of the Constitution by Judicial Interpretation *

The expansion of the power of Congress over interstate and foreign commerce clearly illustrates how the Constitution has developed to meet changing conditions. Due to the attitude of the courts, the word commerce has been enlarged as the agencies of commerce have increased, and thus commercial regulations have been able to keep pace with the times. The following opinion shows how judicial interpretation has permitted the Constitution to grow.

Since the case of Gibbons *v.* Ogden it has never been doubted that commercial intercourse is an element of

commerce which comes within the regulating power of Congress. Post-offices and post-roads are established to facilitate the transmission of intelligence. Both commerce and the postal service are placed within the power of Congress, because, being national in their operation, they should be under the protecting care of the national government.

The powers thus granted are not confined to the instrumentalities of commerce, or the postal system known or in use when the Constitution was adopted, but they keep pace with the progress of the country, and adapt themselves to the new developments of times and circumstances. They extend from the horse with its rider to the stage-coach and the steamboat to the railroad, and from the railroad to the telegraph, as these new agencies are successively brought into use to meet the demands of increasing population and wealth. They were intended for the government of the business to which they relate, at all times and under all circumstances. As they were intrusted to the general government for the good of the nation, it is not only the right, but the duty, of Congress to see to it that intercourse among the States and the transmission of intelligence are not obstructed or unnecessarily encumbered by State legislation.

The electric telegraph marks an epoch in the progress of time. In a little more than a quarter of a century it has changed the habits of business, and become one of the necessities of commerce. It is indispensable as a means of intercommunication, but especially is it so in commercial transactions. The statistics of the business before the recent reduction in rates show that more than eighty per cent of all the messages sent by telegraph related to commerce. Goods are sold and money paid upon telegraphic orders. Contracts are made by telegraphic cor-

respondence, cargoes secured, and the movement of ships directed. The telegraphic announcement of the markets abroad regulates prices at home, and a prudent merchant rarely enters upon an important transaction without using the telegraph freely to secure information.

It is not only important to the people, but to the government. By means of it the heads of departments in Washington are kept in close communication with all their various agencies at home and abroad, and can know at almost any hour, by inquiry, what is transpiring anywhere that affects the interests they have in charge. Under such circumstances, it cannot for a moment be doubted that this powerful agency of commerce and intercommunication comes within the controlling power of Congress, certainly against hostile State legislation. It is not necessary now to inquire whether Congress may assume the telegraph as part of the postal service and exclude all others from its use. The present case is satisfied, if we find that Congress has power, by appropriate legislation, to prevent the States from placing obstructions in the way of its usefulness.

The government of the United States, within the scope of its powers, operates upon every foot of territory under its jurisdiction. It legislates for the whole nation, and is not embarrassed by state lines. Its peculiar duty is to protect one part of the country from encroachments by another upon the national rights which belong to all.

CHAPTER III

THE STATES AND THE CITIZENS

12. The States and the Nation *

One of the greatest problems confronting the Constitutional Convention of 1787 was the division of powers between the national government and the states. After long discussion a sphere of action was given to each, and within its own sphere each government was made supreme. They were designed to exist side by side, each performing essential governmental functions. The inter-connection of the states with the nation was described by the Supreme Court in the following case.

We have in our political system a Government of the United States and a government of each of the several states. Each one of these governments is distinct from the others, and each has citizens of its own who owe it allegiance, and whose rights, within its jurisdiction, it must protect. The same person may be at the same time a citizen of the United States and a citizen of a state,—but his rights of citizenship under one of these governments will be different from those he has under the other.

Citizens are the members of the political community to which they belong. They are the people who compose the community, and who, in their associated capacity, have established or submitted themselves to the dominion of a government for the protection of their individual as well as their collective rights. In the formation of a government, the people may confer upon it such powers as they choose. The government when so formed, may, and when

called upon should, exercise all the powers it has for the protection of the rights of its citizens and the people within its jurisdiction; but it can exercise no other. The duty of a government to afford protection is limited always by the power it possesses for that purpose.

Experience made the fact known to the people of the United States, that they required a national government for national purposes. The separate governments of the separate states, bound together by the Articles of Confederation alone, were not sufficient for the promotion of the general welfare of the people in respect to foreign nations, or for their complete protection as citizens of the confederated states. For this reason, the people of the United States, "In order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare and secure the blessings of liberty" to themselves and their posterity, ordained and established the Government of the United States, and defined its powers by a Constitution, which they adopted as its fundamental law, and made its rule of action.

The government thus established and defined is to some extent a government of the states in their political capacity. It is, also, for certain purposes, a government of the people. Its powers are limited in number, but not in degree. Within the scope of its powers, as enumerated and defined, it is supreme and above the states; but beyond, it has no existence. It was erected for special purposes and endowed with all the powers necessary for its own preservation and the accomplishment of the ends its people had in view. It can neither grant nor secure to its citizens any right or privilege not expressly or by implication placed under its jurisdiction.

The people of the United States resident within any

State are subject to two governments: one State and the other National; but there need be no conflict between the two. The powers which one possesses, the other does not. They are established for different purposes, and have separate jurisdictions. Together they make one whole, and furnish the people of the United States with a complete government, ample for the protection of all their rights at home and abroad. True, it may sometimes happen that a person is amenable to both jurisdictions for one and the same act. Thus, if a Marshal of the United States is unlawfully resisted while executing the process of the courts within a state, and the resistance is accompanied by an assault on the officer, the sovereignty of the United States is violated by the resistance, and that of the State by the breach of the peace, in the assault. So too, if one passes counterfeited coin of the United States within a state, it may be an offense against the United States and the State: the United States because it discredits the coin; and the State, because of the fraud upon him to whom it is passed. This does not, however, necessarily imply that the two governments possess powers in common, or bring them into conflict with each other. It is the natural consequences of a citizenship which owes allegiance to two sovereignties, and claims protection from both. The citizen cannot complain, because he has voluntarily submitted himself to such a form of government. He owes allegiance to the two departments, so to speak, and within their respective spheres must pay the penalties which each exacts for disobedience of its laws. In return, he can demand protection from each within its own jurisdiction.

The Government of the United States is one of delegated powers alone. Its authority is defined and limited by the Constitution. All powers not granted to it by that

instrument are reserved to the States or to the people. No rights can be acquired under the Constitution or laws of the United States, except such as the Government of the United States has the authority to grant or secure. All that cannot be so granted or secured are left under the protection of the States.

13. Supremacy of Federal Law *

This "great judgment of Chief Justice Taney" is frequently quoted by the Supreme Court and by legal authorities to sustain the preëminent position of the national government. The case arose in Wisconsin over the fugitive slave law and the state Supreme Court ordered the release of a man who had been placed under arrest by a United States marshal and convicted in a federal court. The reasoning of the United States Supreme Court sustaining the supremacy of the federal Constitution and laws follows.

The judges of the supreme court of Wisconsin do not distinctly state from what source they suppose they have derived this judicial power. There can be no such thing as judicial authority, unless it is conferred by a government or sovereignty; and if the judges and courts of Wisconsin possess the jurisdiction they claim, they must derive it either from the United States or the State. It certainly has not been conferred on them by the United States; and it is equally clear that it was not in the power of the State to confer it, even if it had attempted to do so; for no State can authorize one of its judges or courts to exercise judicial power, by habeas corpus or otherwise, within the jurisdiction of another and independent government. And although the State of Wisconsin is sovereign within its territorial limits to a certain extent, yet that sovereignty is limited and restricted by the Constitution of the United States. And the powers of the general gov-

ernment, and of the State, although both exist and are exercised within the same territorial limits, are yet separate and distinct sovereignties, acting separately and independently of each other, within their respective spheres. And the sphere of action appropriate to the United States is as far beyond the reach of the judicial process issued by a state judge or a state court, as if the line of division was traced by landmarks and monuments visible to the eye. And the State of Wisconsin had no more power to authorize these proceedings of its judges and courts, than it would have had if the prisoner had been confined in Michigan, or in any other State of the Union, for an offense against the laws of the State in which he was imprisoned.

But, as we have already said, questions of this kind must always depend upon the Constitution and laws of the United States, and not of a State. The Constitution was not formed merely to guard the States against danger from foreign nations, but mainly to secure union and harmony at home; for if this object could be attained, there would be but little danger from abroad; and to accomplish this purpose, it was felt by the statesmen who framed the Constitution, and by the people who adopted it, that it was necessary that many of the rights of sovereignty which the States then possessed should be ceded to the general government; and that, in the sphere of action assigned to it, it should be supreme, and strong enough to execute its own laws by its own tribunals, without interruption from a State or from state authorities. And it was evident that anything short of this would be inadequate to the main object for which the government was established; and that local interests, local passions or prejudices, incited and fostered by individuals for sinister purposes, would lead to acts of aggression and injustice by one State upon the

rights of another, which would ultimately terminate in violence and force, unless there was a common arbiter between them, armed with power enough to protect and guard the rights of all, by appropriate laws, to be carried into execution peaceably by its judicial tribunals.

The language of the Constitution, by which this power is granted is too plain to admit of doubt or to need comment. It declares that "this Constitution, and the laws of the United States which shall be passed in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land, and the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding."

But the supremacy thus conferred on this government could not peaceably be maintained, unless it was clothed with judicial power, equally paramount in authority to carry it into execution; for if left to the courts of justice of the several States, conflicting decisions would unavoidably take place, and the local tribunals could hardly be expected to be always free from the local influences of which we have spoken. And the Constitution and laws and treaties of the United States, and the powers granted to the federal government, would soon receive different interpretations in different States, and the government of the United States would soon become one thing in one State and another thing in another. It was essential, therefore, to its very existence as a government, that it should have the power of establishing courts of justice, altogether independent of state power, to carry into effect its own laws; and that a tribunal should be established in which all cases which might arise under the Constitution and laws and treaties of the United States should be finally and conclusively decided. Without such a tribunal,

it is obvious that there would be no uniformity of judicial decision; and that the supremacy (which is but another name for independence), so carefully provided in the clause of the Constitution above referred to, could not possibly be maintained peaceably, unless it was associated with this paramount judicial authority.

Accordingly, it was conferred on the general government, in clear, precise, and comprehensive terms. The importance which the framers of the Constitution attached to such a tribunal for the purpose of preserving internal tranquillity, is strikingly manifested by the clause which gives this court jurisdiction over the sovereign States which compose this Union, when a controversy arises between them. Experience has demonstrated that this power was not unwisely surrendered by the States; for in the time that has already elapsed since this government came into existence, several irritating and angry controversies have taken place between adjoining States, in relation to their respective boundaries, and which have sometimes threatened to end in force and violence, but for the power vested in this court to hear them and decide between them.

The same purposes are clearly indicated by the different languages employed when conferring supremacy upon the laws of the United States, and jurisdiction upon its courts. In the first case, it provides that "this Constitution, and the laws of the United States *which shall be made in pursuance thereof,* shall be the supreme law of the land, and obligatory upon the judges in every State." The words in italics show the precision and forethought which marks every clause in the instrument. The sovereignty to be created was to be limited in its powers of legislation, and if it passed a law not authorized by its enumerated powers, it was not to be regarded as the

supreme law of the land, nor were the state judges bound to carry it into execution. And as the courts of a State, and the courts of the United States, might, and indeed certainly would, often differ as to the extent of the powers conferred by (upon?) the general government, it was manifested that serious controversies would arise between the authorities of the United States and of the States, which must be settled by force of arms unless some tribunal was created to decide between them finally and without appeal.

The Constitution has accordingly provided, as far as human foresight could provide, against this danger. And in conferring judicial power upon the federal government, it declares that the jurisdiction of its courts shall extend to all cases arising under "this constitution" and the laws of the United States—leaving out the words of restriction contained in the grant of legislative power which we have above noticed. The judicial power covers every legislative act of Congress, whether it be made within the limits of its delegated powers, or be an assumption of power beyond the grants in the Constitution.

This judicial power was justly regarded as indispensable, not merely to maintain the supremacy of the laws of the United States, but also to guard the States from any encroachment upon their reserved rights by the general government. And as the Constitution is the fundamental and supreme law, if it appears that an act of Congress is not pursuant to and within the limits of the power assigned to the federal government, it is the duty of the courts of the United States to declare it unconstitutional and void.

We do not question the authority of a state court, or judge, who is authorized by the laws of the State to issue the writ of habeas corpus, to issue it in any case where

the party is imprisoned within its territorial limits, provided it does not appear, when the application is made, that the person imprisoned is in custody under the authority of the United States. But, after the return is made, and the state judge or court judicially apprised that the party is in custody under the authority of the United States, they can proceed no further. And no power is more clearly conferred by the Constitution and laws of the United States, than the power of this court to decide ultimately and finally, all cases arising under such Constitution and laws; and for that purpose to bring here for revision, by writ of error, the judgment of a state court, where such questions have arisen, and the right claimed under them is denied by the highest judicial tribunal in the State.

14. Citizenship *

The definition of citizenship given in the Fourteenth Amendment needs considerable explanation to make it complete. In the case below, involving a Chinese who had been born in the United States, the Supreme Court has given a careful explanation of the various implications of the Amendment.

The question presented by the record is whether a child born in the United States, of parents of Chinese descent, who at the time of his birth are subjects of the Emperor of China, but have a permanent domicile and residence in the United States, and are there carrying on business, and are not employed in any diplomatic or official capacity under the Emperor of China, becomes at the time of his birth a citizen of the United States, by virtue of the first clause of the Fourteenth Amendment of the Constitution, "All persons born or naturalized in the United States, and

subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside."

The Constitution of the United States, as originally adopted, uses the words "citizen of the United States." The Constitution nowhere defines the meaning of these words, either by way of inclusion or of exclusion, except in so far as this is done by the affirmative declaration that 'all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States." In this, as in other respects, it must be interpreted in the light of the common law, the principles and history of which were familiarly known to the framers of the Constitution. The language of the Constitution, as has been well said, could not be understood without reference to common law.

The first section of the Fourteenth Amendment of the Constitution begins with the words, "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." As appears upon the face of the amendment, as well as from the history of the times, this was not intended to impose any new restrictions upon citizenship, or to prevent any persons from becoming citizens by the fact of birth within the United States, who would thereby have become citizens according to the law existing before its adoption. It is declaratory in form, and enabling and extending in effect. Its main purpose doubtless was, as has been often recognized by this court, to establish the citizenship of free negroes, which had been denied in the opinion delivered by Chief Justice Taney in Dred Scott *v.* Sandford; and to put it beyond doubt that all blacks, as well as whites, born or naturalized within the jurisdiction of the United States, are citizens of the United States.

The real object of the Fourteenth Amendment of the Constitution, in qualifying the words "all persons born in the United States" by the addition "and subject to the jurisdiction thereof," would appear to have been to exclude, by the fewest and fittest words (besides children of members of the Indian tribes, standing in a peculiar relation to the national government, unknown to the common law), the two classes of cases,—children born of alien enemies in hostile occupation, and children of diplomatic representatives of a foreign state,—both of which, as has already been shown, by the law of England and by our own law, from the time of the first settlement of the English colonies in America, had been recognized exceptions to the fundamental rule of citizenship by birth within the country.

The foregoing considerations and authorities irresistibly lead us to these conclusions: The Fourteenth Amendment affirms the ancient and fundamental rule of citizenship by birth within the territory, in the allegiance and under the protection of the country, including all children here born of resident aliens, with the exceptions or qualifications (as old as the rule itself) of children of foreign sovereigns or their ministers, or born on foreign public ships, or of enemies within and during a hostile occupation of part of our territory, and with the single additional exception of children of members of the Indian tribes owing direct allegiance to their several tribes. The amendment, in clear words and in manifest intent, includes the children both within the territory of the United States of all other persons, of whatever race or color, domiciled within the United States. Every citizen or subject of another country, while domiciled here, is within the allegiance and the protection, and consequently subject to the jurisdiction, of the United States.

To hold that the Fourteenth Amendment of the Constitution excludes from citizenship the children, born in the United States, of citizens or subjects of other countries, would be to deny citizenship to thousands of persons of English, Scotch, Irish, German, or other European parentage, who have always been considered and treated as citizens of the United States.

Chinese persons, born out of the United States, remaining subjects of the Emperor of China, and not having become citizens of the United States, are entitled to the protection of and owe allegiance to the United States, so long as they are permitted by the United States to reside here; and are "subject to the jurisdiction thereof," in the same sense as all other aliens residing in the United States.

It is true that Chinese persons born in China cannot be naturalized, like other aliens, by proceedings under the naturalization laws. But this is for want of any statute or treaty authorizing or permitting such naturalization, as will appear by tracing the history of the statutes, treaties, and decisions upon that subject, always bearing in mind that statutes enacted by Congress, as well as treaties made by the President and Senate, must yield to the paramount and supreme law of the Constitution.

The power, granted to Congress by the Constitution, "to establish an uniform rule of naturalization," was long ago adjudged by this court to be vested exclusively in Congress.

The power of naturalization, vested in Congress by the Constitution, is a power to confer citizenship, not a power to take it away. "A naturalized citizen," said Chief Justice Marshall, "becomes a member of the society, possessing all the rights of a native citizen, and standing, in the view of the Constitution, on the footing of a native. The

Constitution does not authorize Congress to enlarge or abridge those rights. The simple power of the national legislature is to prescribe a uniform rule of naturalization, and the exercise of this power exhausts it, so far as respects the individual. The Constitution then takes him up, and, among other rights, extends to him the capacity of suing in the courts of the United States, precisely under the same circumstances under which a native might sue." Congress having no power to abridge the rights conferred by the Constitution upon those who have become naturalized citizens by virtue of acts of Congress, a fortiori no act or omission of Congress, as to providing for the naturalization of parents or children of a particular race, can affect citizenship acquired as a birth-right, by virtue of the Constitution itself, without any aid of legislation. The Fourteenth Amendment, while it leaves the power where it was before, in Congress, to regulate naturalization, has conferred no authority upon Congress to restrict the effect of birth, declared by the Constitution to constitute a sufficient and complete right to citizenship.

The fact, therefore, that acts of Congress or treaties have not permitted Chinese persons born out of this country to become citizens by naturalization, cannot exclude Chinese persons born in this country from the operation of the broad and clear words of the Constitution, "All persons born in the United States, and subject to the jurisdiction thereof, are citizens of the United States."

Upon the facts agreed in this case, the American citizenship which Wong Kim Ark acquired by birth within the United States has not been lost or taken away by anything happening since his birth. No doubt he might himself, after coming of age, renounce this citizenship, and become a citizen of the country of his parents, or of any other country; for by our law, as solemnly declared by

Congress, "the right of expatriation is a natural and inherent right of all people," and "any declaration, instruction, opinion, order or direction of any officer of the United States, which denies, restricts, impairs or questions the right of expatriation, is declared inconsistent with the fundamental principles of the republic."

15. Privileges and Immunities of State Citizens *

In a federal system of government, where each state possesses powers equal to every other state, there must be some constitutional protection to prevent one state from discriminating against the citizens of the other states. The experience of the American states under the Articles of Confederation made this clear. The Constitution of the United States therefore provided that "the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states." This provision is explained in the following opinion.

It was undoubtedly the object of the clause in question to place the citizens of each State upon the same footing with citizens of other States, so far as the advantages resulting from citizenship in those States are concerned. It relieves them from the disabilities of alienage in other states; it inhibits discriminating legislation against them by other States; it gives them the right of free ingress into other States, and egress from them; it insures to them in other States the same freedom possessed by the citizens of those States in the acquisition and enjoyment of property and in the pursuit of happiness; and it secures to them in other States the equal protection of the laws. It has been justly said that no provision in the Constitution has tended so strongly to constitute the citizens of the United States one people as this.

Indeed, without some provision of the kind removing from the citizens of each State the disabilities of alienage

in the other States, and giving them equality of privilege with citizens of those States, the Republic would have constituted little more than a league of States; it would not have constituted the Union which now exists.

But the privileges and immunities secured to citizens of each State in the several States, by the provision in question, are those privileges and immunities which are common to the citizens in the latter States under their Constitutions and laws by virtue of their being citizens. Special privileges enjoyed by citizens in their own States are not secured in other States by this provision. It was not intended by the provision to give to the laws of one State any operation in other States. They can have no such operation, except by the permission, express or implied, of those States. The special privileges which they confer must, therefore, be enjoyed at home, unless the assent of other States to their enjoyment therein be given.

16. The Constitutional Position of the Property Owner * [1]

Arthur T. Hadley, distinguished scholar and former President of Yale University, has presented in the lecture below a very lucid explanation of the constitutional status of the property owner in the United States. The facts presented in this lecture are necessary to an understanding of the attitude of our public authorities and of our people in industrial matters.

In spite of frequent acts of adverse legislation, the constitutional position of the property owner in the United States has been stronger than in any country in Europe. However much public feeling may at times move in the direction of socialistic measures, there is no nation which is so far removed from socialism as ours by its organic law

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and its habits of political action. I propose to trace, as far as is possible within the limits of a single lecture, the reasons for this somewhat anomalous condition; to show why the rights of property were so strongly protected in the Federal Constitution, as originally adopted by the several states and as subsequently interpreted by the courts; and why as a matter of history the change of the social and political order from an aristocracy to a democracy has not been accompanied by anything like a corresponding change in the industrial order.

I shall begin with a proposition which may sound somewhat startling, but which I believe to be literally true. The whole American political and social system is based on industrial property right, far more completely than has ever been the case in any European country. In every nation of Europe there has been a certain amount of traditional opposition between the government and the industrial classes. In the United States no such tradition exists. In the public law of European communities industrial freeholding is a comparatively recent development. In the United States, on the contrary, industrial freeholding is the foundation on which the whole social order has been established and built up.

During the war of the Revolution, from 1775 to 1782 and in the years immediately thereafter, the American Union had been a league of independent states, and a very loose one. These states had formed an organization for mutual protection in carrying on a war against England. But this organization was very weak indeed. While the war lasted, the imminence of perils which threatened to involve all, and the personality of a few leaders, of whom George Washington was the most conspicuous, enabled the different colonies to act with some degree of coherence. "We must all hang together," said one of the signers of

the Declaration of Independence, "or we shall all hang separately." But when independence was conceded by England in 1782 and the restraints of common danger were removed, the hopeless inefficiency of the central government became obvious. From 1783 to 1789 the United States had no means of securing concert of action at home or respect and influence abroad. Clear-headed men saw the absolute necessity of centralization. The members of the Constitutional Convention of 1787 felt these considerations very strongly. A large majority of them were men of substance; a considerable minority were men of wealth. They had viewed with apprehension the readiness of their fellow countrymen to issue paper money, to scale down debts, or to interpret the obligation of contract in such a manner as to render large investments of capital precarious. It was at once a matter of personal interest and of public interest to them to prevent this; of personal interest because acts of this kind would impair their own enjoyment and success; of public interest because it was vitally necessary to America to have its industry and commerce managed in the most efficient and far-sighted way.

This fact is of itself sufficient to account for the general tone of the Constitution on matters of property right. But there are certain clauses in that instrument which have been even more effective in securing the property holders against adverse legislation than the Convention itself intended or expected. The reason for this is somewhat curious. The whole document was the result of a series of compacts, agreements, and compromises, between two pretty evenly balanced parties—a states rights party, which wished to limit the powers of the federal government, and a national party, which was anxious to set some practical control on the autonomy of the states. In meeting the wishes of these two parties and limiting the powers

of both state and federal governments, the Convention more or less unwittingly gave the property owners as a body certain guaranties against legislative interference of any kind.

It was in the first place provided that there should be no taking of private property without due process of law. The states rights men feared that the federal government might, under the stress of military necessity, pursue an arbitrary policy of confiscation. The federalists, or national party, feared that one or more of the states might pursue the same policy under the influence of sectional jealousy. To avoid this double danger both parties united on a constitutional provision which prevented the legislature or executive, either of the nation or of the individual states, from taking property without allowing judicial inquiry into the public necessity involved, and without making full compensation even in case the result of such inquiry was favorable to the government; and it was further provided, by another equally important clause in the Constitution, that no state should pass a law impairing the obligation of contracts.

No man foresaw what would be the subsequent effect of these provisions in preventing a majority of voters, acting in the legislature or through the executive, from disturbing existing arrangements with regard to railroad building or factory operation until the railroad stockholders or factory owners had had the opportunity to have their case tried in the courts. Clauses which were at first intended to prevent sectional strife, and to protect the people of one locality against arbitrary legislation in another, became a means of strengthening vested rights as a whole against the possibility of legislative or executive interference. Nor was the direct effect of these clauses in preventing specific acts on the part of the legislature the

most important result of their existence. They indirectly became a powerful means of establishing the American courts in the position which they now enjoy as arbiters between the legislature and the property owner. For whenever an act of the legislature violated, or even seemed to violate, one of these clauses, it came before the court for review; and in case the court found that such violation existed, the law was blocked—rendered powerless by a dictum of the judges declaring it unconstitutional.

An act of the British Parliament is authoritative. It is law, ipso facto, as soon as it is regularly passed. It cannot be resisted except by revolution. But an Act of the United States Congress or of a state legislature is not law except as it lies within the limits allowed by the Constitution. Whether it transgresses these limits is a matter for the courts to decide. Any restriction of property right by legislative act is therefore null and void unless the courts decide that due process of law has been followed and that no obligation of contract is impaired.

The power thus granted to the courts to render acts of the legislature inoperative is perhaps the most distinctive feature of the American Constitution; it is certainly the one which English publicists find it the most difficult to understand.

It is sometimes argued that if the American courts can limit the powers of both national and state legislatures, the courts themselves are sovereign. This appears to be a misleading use of language. The courts certainly do not claim or exercise the kind of sovereignty which is exercised by the English Parliament. It is a truer description of the situation to say that America under the Constitution witnesses an actual exercise of divided sovereignty; that the people live under a concurrent jurisdiction of state and nation, obeying each in some things;

and that the authoritative position of the courts in determining the limits of this sovereignty is not itself a transcendent exercise of sovereign power, but a highly skilled exposition of public opinion—in other words, that the authority of American judges rests on the same sort of basis as the authority of English judges—on their power of interpretation of precedents and customs.

The early history of the Supreme Courts of the United States furnishes strong confirmation of this statement. While the clauses of the Constitution left the federal courts large duties and powers, their ability to fulfill those duties and to exercise those powers was not shown until a chief justice of the first rank—John Marshall—was by his almost unrivaled power of exposition able to enlist the opinion both of lawyers and of laymen in support of the judicial authority. It is to the work of judges like Marshall and Story and Kent that the actual position of the courts under the American Constitution is mainly due.

But constitutional restraints of this kind, while they strengthened the position of the property holder in American politics, could not give him permanent security in case public opinion demanded a change. For the Constitution itself can be amended, and will be amended, when there is a consensus of voters in different parts of the country in favor of amendment. Alteration of the Federal Constitution is a slower and more formal thing than alteration of the law, or than alteration of the constitution of any single state. But it comes when there is a demand for it. Why did not this demand make itself felt? Why did the intensely democratic America of the nineteenth century rest satisfied with constitutional provisions regarding property right which were devised by representatives of an aristocratic society in the eighteenth

under circumstances which strengthened the hands of the conservatives?

The first cause for this persistence of property right is to be found in the land policy of the United States. The immigrant who settled in the western states was offered two things: the vote, and the chance of becoming a landowner. The fact that votes were bestowed so freely upon large bodies of settlers, many of whom were of alien race and traditions, caused serious apprehension in many quarters. Where so many of the individual settlers were personally reckless and uncontrolled by tradition, there was good reason to fear that they would organize their governments in a reckless and untraditional fashion, and thus pave the way for the abuse of democratic power. These fears proved to be unfounded. The opportunity to own farms in freehold made ambitious settlers conservative. Men with a hundred and sixty acres of land were not likely to pass laws which would interfere with the rights of property, and particularly of landed property. The prospect of becoming landowners had the same sort of steadying effect upon men who framed the constitutions of new states in 1820 or 1830 that the fact of already being landowners had upon the men who framed the Federal Constitution forty years earlier.

But Hamilton's policy of giving a home at a nominal price to every bona fide settler, though it was the most important single element in securing the rights of property against measures of legislative interference, was by no means the only influence of the kind.

The immigrant found it easy to get land; he found it hard to get capital. Natural resources were present in abundance. The accumulated supplies of machinery, fuel, and food which enable man to utilize those natural resources effectively were conspicuous by their absence.

Each addition to the capital of the community, however, small, represented a large addition to its productiveness. The savings of the settlers and the investments of citizens who lived in other states contributed alike to this end.

Under these circumstances there was a tendency to grant all possible privileges to those who had capital for investment and to free them from arbitrary restrictions of every kind. No community would enforce a usury law which limited the rate of interest to six per cent, when people who borrowed capital at eight or at ten per cent made large and legitimate profits over and above the interest rate. The dangers lay in the opposite direction. All through the period from 1830 to 1860 the western states of the Union tended to encourage every sort of scheme which would attract capital or the semblance of capital, without much regard to its present or prospective soundness. Banking laws were so loosely and carelessly drawn that a board of directors could issue large amounts of notes upon small amounts of reserve.

The control of the government over corporations was weakened, and the rights and immunities of the property holders were correspondingly strengthened, by two developments of constitutional law whose effect upon the modern industrial situation may be fairly characterized as fortuitous. One of these was the decision in the celebrated Dartmouth College case in 1819; the other was the passage of the Fourteenth Amendment to the Constitution of the United States in 1868.

I call their effect fortuitous, because neither the judges who decided the Dartmouth College case nor the legislators who passed the Fourteenth Amendment had any idea how these things would affect the modern economic situation. The Dartmouth College case dealt with an educational institution, not with an industrial enterprise. The

Fourteenth Amendment was framed to protect the negroes from oppression by the whites, not to protect corporations from oppression by the legislature. It is doubtful whether a single one of the members of Congress who voted for it had any idea that it would touch the question of corporate regulation at all. Yet the two together have had the effect of placing the American industrial corporation in a constitutional position of extraordinary vantage.

In 1816 the New Hampshire legislature attempted to abrogate the charter of Dartmouth College. Daniel Webster was employed by the College in its defense. His reasoning so impressed the members of the court that they committed themselves to the position that a charter was a contract; that a state having induced people to invest money by certain privileges and immunities, could not at will modify those privileges and immunities thus granted. Whether the court would have taken such broad ground if the matter had come before it thirty or forty years later, when the abuses of ill-judged industrial charters had become more fully manifest, is not sure; but having once adopted this view and maintained it in a series of decisions, the courts could not well abandon it. Inasmuch as many of the corporate charters granted by state legislatures had an unlimited period to run, the theory that these instruments were contracts binding the state for all time had a very important bearing in limiting the field within which a legislature could regulate the activity of such a body, or an executive interfere with it.

Again, by the Fourteenth Amendment to the Federal Constitution the states were forbidden to interfere with the civil rights of any person or to pass discriminating laws which should treat different persons unequally. This amendment, passed just after the close of the Civil War, was intended simply to protect the negro; to prevent the

southern states which were in the act of being readmitted to the Unioin from abridging the rights of the blacks. A number of years elapsed before the probable effect of this clause upon the constitutional position of industrial corporations seems to have been realized. But in 1882 the Southern Pacific Railroad Company, having been, as it conceived, unfairly taxed by the assessors of a certain county in California, took the position that a law of the state of California taxing the property of corporations at a different rate from that of individuals was in effect a violation of the Fourteenth Amendment to the Constitution, because a corporation was a person and therefore entitled to the same kind of treatment as any other person. This view, after careful consideration, was upheld by the federal courts. A corporation, therefore, under the law of the United States, is entitled to the same immunities as an individual; and since the charter creating it is a contract, whose terms cannot be altered at the will of the legislature which is a party thereto, its constitutional position as a property holder is much stronger in America than it is anywhere in Europe.

This effect of the Fourteenth Amendment was all the more important because it came at a time when men's political conservatism had been a good deal unsettled by the incidental consequences of the Civil War.

The American people had seen so much good that came from competition that it was inclined to trust it unduly, and to feel that where competition failed to protect the consumer or laborer special legislation to regulate industry would probably make matters worse instead of better. Where one corporation had a monopoly and abused it, it was thought that such a monopoly and such abuse would be only temporary. It was confidently believed that unfair and exorbitant profits would invite a rival corpora-

tion into the field, so that rates would go down and abuses correct themselves. Even in matters like railway transportation, where monopoly was requisite in the interest both of public convenience and economical administration, people clung, in the face of adverse experience, to the hope that competition must somehow be made to act. Some of this irrational belief in competition existed in England; but it was never quite so strong as in the United States.

Again, contrast the conditions affecting the rate of wages in the two countries. In England labor was comparatively immobile. In America the case was wholly different. The mobility of the laborer was very great. He went where he could get the highest wages. If he was paid by the piece, as he generally preferred to be, he worked as hard as he could to increase his earnings. Other members of the community looked on with satisfaction, because he was doing all he could to increase productivity. They were glad to have him do as much as he could. They wished to have him dispose of his labor in the best market. Under these circumstances competitive wages were not only paid and earned, but approved by society as a standard.

This indicates the fundamental reason why competition was viewed with so much favor in the United States. It put a premium on economic efficiency. It tended to give the direction of industrial affairs to the men who could obtain the largest product with the smallest labor. This was vitally necessary for the United States in the first half of its history—more neceesary, I believe, than to any European country. For the immediate problems that lay before the United States at that time were predominantly industrial ones. We had a new country to develop. We had to attract capital by every possible means. We had to employ a moderate amount of labor

and a very scanty amount of inherited wealth in industrial competition with the nations of Europe. This was for a long time the only line in which we could compete with them; it was on our efficiency in this particular that we based our claim to national importance. We had no army or navy comparable with that of European states. Our public service, except in one or two departments, was rudimentary. Our work in literature and in science showed promise rather than performance. But in the intelligent conduct of industry and the development of inventions connected therewith, we had no rival but England. England had the advantage of accumulated capital and sound business traditions; America had the advantage of a competitive system that brought progressive men and methods to the front and thereby equalized the struggle. Small wonder that the patriotic American looked with favor on an institution that enabled him to hold his own in the industrial race. Small wonder that a republic predominantly composed of strong men should overlook the abuses of a system under which the weak members suffered, when it contributed so much to the standing of the nation as a whole.

CHAPTER IV

POLITICAL PARTIES AND POLITICS

17. The Significance of Political Parties *[1]

This paper by Professor McLaughlin demonstrates with great clarity the place which political parties occupy in our governmental order. Although written nearly twenty years ago, its sentences penetrate to the heart of the problem of controlling political parties. To understand the significance of parties is to understand one of the important phases of American government.

In some ways what we call the party management, or the machine, appears to have existed in America before the party. "This day," wrote John Adams in his journal in February, 1763, "learned that the caucus club meets, at certain times, in the garret of Tom Daws, the Adjutant of the Boston Regiment. He has a large house, and he has a movable partition in the garret which he takes down, and the whole club meets in one room. There they smoke tobacco till you cannot see from one end of the garret to the other. There they drink flip, I suppose, and there they choose a moderator who puts questions to vote regularly; and selectmen, assessors, collectors, firewards, and representatives, are regularly chosen before they are chosen in the town." In other words, the town-meeting of Boston, with its vaunted freedom of will and frank discussion, only registered the decision of an ex-

[1] Reprinted with the permission of the Atlantic Monthly, and of the author and the University of Chicago Press.

terior government. Sam Adams, attending the caucus, scribbling for the newspapers, appealing in shrewd and simple fashion to the artisans and watermen of Boston, was the primitive boss who brought things to pass. The father of the American Revolution was the leader of the machine.

Although the framers of our federal Constitution must have had experience with scheming caucuses and with wise political managers, they had no conception of parties in any broad sense. Of intrigue, of faction, of enmity between rich and poor, of tendencies in old-fashioned government, of human ambition, they had knowledge in abundance; but of parties organized, officered, drilled, manipulated, fitted to work consistently for power with inconsistent principles, they knew next to nothing. This was natural, for colonial history had not taught them the lesson, though the colonists had had long controversies and had even made occasional combinations. England had not yet achieved systematic party government, but was giving an example of confusion, out of which in the course of the next few years were to arise clear-cut party systems and managements. With infinite pains the men who framed our Constitution laid down ideas of individual freedom; they devised with great cunning a clever system of checks and balances in order that the government might do no harm; but they left to haphazard arrangements, or to voluntary associations unknown to the law and unknown to the theory of the States, the difficult task that was in itself the great problem of democracy. To these associations, which soon arose, was left the task of furnishing a medium for transmitting the will of the people to the government—this balanced mechanism which the Fathers had so nicely fashioned.

Here was the great political and constitutional problem

of the decades to come; and clearly enough, if we omit the tremendous struggle over slavery and secession, the development of these associations is the greatest fact in our constitutional history. Little by little these formless voluntary associations were hardened into institutions. They were for a long time altogether extra-legal; only within the last few years have statutes distinctly recognized the existence of parties and made regulations for nominations, with an acceptance of the fact that parties and party mechanism are established and have their important function in the conduct of the body politic. Until about twenty years ago, even ballots were printed by the party officials; the candidates or the political managers were themselves responsible for a large part of the expense of conducting an election. The party organization was allowed to grow undisturbed, and to develop its own capacity for representing or controlling the popular will and for controlling the government described on a piece of parchment locked in a safe at Washington. These party systems themselves came to have constitutions and tens of thousands of zealous officials, whose great object was, not to transmit the unsullied will of the people of the government at Washington, but to advance the interests of their own organizations.

No one doubts the importance of the little group of party leaders in England who by virtue of their inherent capacity rise to the head of the loose party organization and in the Cabinet determine the policies of the government. No one doubts that the English Cabinet is an institution, though it is unknown to the law, and though its conferences are as secret as those of the Vatican. But we have not seen, or are just beginning to see, in America, that the complicated system which manages parties and directs government in this country is an institution to be

taken seriously as an established fact, and that the problem of self-government now is the problem of controlling this institution that manages the government which is described by the parchment at Washington. Much of the confusion in our discussion of political problems, much of the incoherence of popular effort, comes from the failure to look facts fairly in the face and to watch the makeup, the methods, and the purposes of the government that has for its purposes the management of what we call the government. The present task of democracy is not to prevent the party management from getting possession of the government, but to make that management responsive to the will of the people. This task is as dignified, as important, and as difficult as the old struggles for representative government, for a responsible ministry, for, in fact, any of the devices and arrangements which were worked out in the course of the long effort to reach political liberty. England, by the revolutions of the seventeenth century, established the principles of her constitution; but her great victory for real self-government came when the party machine was fully recognized as legitimate and was made, in part at least, subservient; the great event was this establishment of the party management in the Cabinet and the fixing of its responsibility.

In America the situation is confusing because we have so many interacting systems and because the mechanism of the government that is described by the Constitution does not easily lend itself to the management of a single party organization. If the party machine could boldly take possession of the government at Washington and manage it in all its ordinary law-making operations, carrying out secret determinations openly and as of right, then we could see the simple fact. But we have clung stupidly to the worn-out idea that the president should not be a

party leader but a representative of the whole people, and that his Cabinet is not a party council but a meeting of administrators. In England the party machine—though the law does not see it—is frankly in possession of the government. In America the national party mechanism is organized outside of the government: its makeup is scarcely known to anyone save the professional; we go upon the humorous supposition that since the party is made up of many people, we really control it.

If now party government and legal government could be made one—perhaps forever an impossible ideal in the complexity of our system—the task of realizing democracy would be lightened or at least made plain; the task would be to direct and influence the party system that is frankly in control of the government, and to do this in such a way that the main body of the people would actually determine what policies should be followed and what men should be put into high office. I need not pretend that, even under such circumstances, even with this one government to be looked after, the task would be easy. It is doubtful if even then democracy would be realized as an actual form of political control; but the work of direction would then be made at least comprehensible.

Surely it is clear that the thing we want to do is to control the party government, and not to let it fall into the hands of a third combination, for whose power, when once it is made complete, there is no remedy but revolution. This thought, of course, underlies the objection to corporate contributions to party committees. Our means of controlling and holding in check the party management of the national parties are so inadequate, that we almost hold our breath for fear of the annihilation of popular government, when we think how difficult it would be for

us to prevent government by organized wealth if the contest were once on.

A glance at our history will illustrate the difficulty of controlling party management and of making it really subject to the will of the main body of the party. The earliest system of presenting candidates for office was through a caucus of office-holders. The governors of the states were nominated by a caucus of legislators, and candidates for the presidency were put forward by party caucus in Congress. Those persons who, because of social standing or influence, were thought capable of holding office, assumed the duty of telling the people for whom they might cast their ballots—a negation of popular determination. This superimposed system was bound to disappear with the rise of democratic sentiment, with the extension of self-confidence among the people, and with the widening of the suffrage that came as the West developed. In the years after the war of 1812, when the masses of the people were beginning to feel their power distinctly, changes were wrought in the nominating system in the states. First came the "mixed convention," made up in part of office-holders, who received into their number persons who were not office-holders; and soon in some of the states the "pure convention" was in existence — a body of men coming from the various parts of the state for the purpose of electing the candidates of their party for state office. This was the result of a revolt against the self-assumed authority of the office-holders. It was an effort to make the government more nearly and immediately what it pretended to be, the people's own.

In 1824 the régime of the congressional caucus was overthrown. There was then but one party, and personal rivalries within it were the order of the day. When

therefore a rump caucus nominated the palsied Crawford for the presidency, this "regular" nomination was treated with little respect by the supporters of Jackson, Adams, and Clay. This disrespect was in part due to the fact that there was only one national party, for under such conditions the authority of customary mechanism is endangered; but to be understood aright the situation must be seen in connection with the general democratic upheaval which was everywhere apparent, which marked the new rise of popular self-confidence, and which shortly, in the advent of the spoils system, heralded an effort of the people to make the government really their own. The protest against King Caucus must be read in the light of the social temperament of the day; it ushered in the reign of Jacksonian self-satisfied democracy, which meant so much in the political, educational, and intellectual history of America.

As no one of the candidates received a majority of the electoral votes, the election of 1824 was decided by the House, a fact hard to be borne by the protestants against congressional nomination. In the next few years the democratic protest was variously registered: by the total disappearance of the congressional nomination; by the triumphant election of Jackson as the man of the people; by the attack on the office-holders and the installation of the spoils system; and by the holding of national conventions to present candidates for election.

Here came, however, one of those recurring contradictions which show the difficulty of popular government, which apparently prove that mechanism is a necessity, and which on the other hand indicate clearly that a mechanism established to register popular desire tends irresistibly to control it. It is apparently an impossibility to set up a transformer, the purpose of which is to transmute public

wishes into governmental action, and to have that device work as an inanimate sensitive mechanism. The invention is used at once for the old end, not to transmit power from the people to the government, but as a means of controlling the people; the power passes through such a mechanism downward to the masses and not from them upward to the government. The convention system, the result of an insurrection against dictation from office-holders, was not long a means for expressing popular wishes. The party management used it freely and deftly; it gave new opportunities for the skill of the professional political mechanic. And we are now seeking to get rid of this device originally established to give greater scope for popular desires; in the various states of the union we are now making attempts to establish systems of popular nomination, because it is believed that we can make the government our own by transferring to the people the right to say for whom they may cast their ballots. In national politics, too, we have come to have little faith in the nominating convention, though at times it is impressively subservient, in spite of the management, to popular demands, expressed in all sorts of unmechanical and unsystematic ways.

But of greater significance than the convention system, which came in Jackson's time as a protest against superimposed control and dictation from office-holders, was the spoils system. This, too, was, in national politics at least, the effect of a protest against an office-holding régime, the result in some measure of the notion that the government was not for any official class but for the people. As a matter of fact, of course, it did not operate to democratize the government; on the contrary it provided a means of financing party managment; it furnished the sinews of war to party government. The men who occupied their

time in manipulation for the purpose of getting and holding office and for managing the government were now furnished by the public with the funds for political warfare and for carrying out their plans of campaign. When once a party is fairly organized, with a selected body of leaders, with lieutenants and subalterns in every nook and corner of the land, it needs funds. No matter how praiseworthy the party principles, continuous activity under expert guidance required funds; and the spoils system was a device whereby the great governmental system which managed the party was provided with funds from the public treasury; for office was given by party leaders to pay party debts, and, moreover, portions of the official salaries were paid over to the party management to finance its operations. It is worthy of note, too, that under the spoils system persons inducted into office because of their activity as party workers were expected to serve the party and its organized board of direction. When once that idea prevails, the real government is obviously the party organization; the so-called government is the instrument, the conventional grooves through which the system standing without expresses its authority.

There has been a great outcry against the spoils system by many who do not appear to see the simplicity of the whole matter and its preëminent rationalness. The establishment of so-called popular government brought parties—parties with principles and parties with hunger. We cannot conceive of the possibility of getting on without them; it is easier to imagine the demolition of any part of our constitutional organization, the submersion of a large part of what the Constitution describes, than to imagine our getting on without political combinations; they are our vital institutions, they abide in the innermost spirit of the people. We cannot live under a scheme in

which everyone acts as a disassociated atom; organization is an absolute necessity, and we may thank our stars that our genius for politics, if not for real self-government, has brought about the establishment of two big parties instead of a crowd of factions like those which masquerade as parties in continental Europe. Nothing is a greater proof of American political capacity than this organization of two competing parties to manage a government, and that too a government strikingly ill adapted to the party régime.

If then we are to have parties and if we really desire their presence, if they are an essential part of the great task of democracy, how shall they be financed? Under the spoils system they were financed by the government itself, which gave offices and salaries sometimes to incompetent persons, and sometimes when there were no duties to be performed; for the question was not fitness for the office but capacity as partisans. The party machine was furnished with fuel and lubricant at public expense. Recently it has been proposed that campaign expense should be paid openly from the state or national treasury. This would be to do only what was done indirectly and amid great protestations of patriotism for half a century or more under the spoils system and is still done to some extent. The spoils system is a method of financing political parties, which are the inevitable companions of so-called popular government. Unless men through the country at large are willing to contribute openly and for legitimate purposes to the party organization, or unless men become suddenly so virtuous and altruistic that they are ready to do party service at their own expense, some legal method of furnishing the party organization with funds must be discovered. We should have little hesitation in preferring the spoils method of financing party manage-

ment to the secret system, whereby large corporations with special interests to be subserved furnish the funds in exchange for favors. Surely the spoils system, if for no other reason, because of its flagrant publicity, is preferable to the system described by Mr. Platt in his testimony before the insurance investigating committee. Of course managers who are honest and are not in the pay of the corporations do get some recompense personally for arduous party service; they get a mild distinction, they get a sense of power, they get the fun of the game. As good whips in England die in the House of Lords, so here a big party leader like Mr. Hanna may become a king-maker in the Senate. But we are forced also to contemplate a leader of a different kind who slips across the Atlantic to open a racing stable and shake the dust of hurrying America from his feet. What shall be the means of financing the party machine is without exception the greatest question of the hour. Without some proper method, honest party government is extremely difficult and real democracy a hopeless dream.

My main theme is the general organization of national parties and their influence in our history; but one cannot approach completeness in discussing the subject without realizing that private autocrats and local rings of the most corrupt character have often retained their power because of their service to the national mechanism. And one must notice too that, in the course of time, there came various predatory methods, which I have no desire to connect intimately with legitimate party machinery. The support of these rings by open use of the spoils—vulgar, expensive, and dangerous though it be—is probably preferable to the systems that have been largely followed. The practice of direct stealing, whereby Mr. Swartout, collector at New York, some seventy years ago purloined

over a million dollars, has been given up as hopelessly banal and crude. The methods of the Tweed ring, though partly those of common stealing, showed more adroitness and originality; they have recently been followed in some measure in other states and cities, and conspicuously in unimaginative Pennsylvania. But the last refinement is to finance the local rings and irrigate their systems, by subjecting corporations to demands for ransom and by leaving the corporations to recoup themselves by the use of privileges or by opportunity to pile up legitimate wealth without fear of brigandage. At times, on important matters, this system has transferred the government from the machine to the corporation. The licensing of crime by the local ruler who owns the government and can issue immunities is again an interesting fact in the general history of popular government. We shall see all these things more clearly, if, amid our denunciation of their odious criminality, we see their connection with the great duty of furnishing funds for the party system.

There appear at times evidences of an amusing incapacity to see the actual situation. Strong objections, violent protests are made because a member of the party organization is put into office—because, for example, he is given the opportunity of drawing the salary and holding the title of postmaster. Let us ask the protestants frankly why the political managers should be expected to ask the advice of those who have done nothing to care for the interest of party. So long as we have popular government, we shall have parties; so long as we have parties, we shall have party managers; so long as we have managers, we must expect them to look after their interests and their party's nurture. If anyone wishes to stay outside of the party lines, let him do so and let him make just as big and violent a protest as he can against unfit appointments;

by his outcry, he too is serving the state; but let him not be amazed at the temerity of the party manager charged with a public duty—for the management of a party can be called nothing less—in putting into office a wheel-horse of the party, rather than some decorous citizen who leaves to others the responsibility for making quasi-popular government a possibility.

I have spoken of the party as if it were bent on controlling the government for certain ends, and as if for that reason it acquired the offices and financed its operation by the spoils system. As a matter of fact, principles are often, if not commonly, adopted to aid in the acquisition of position. While parties have tendencies, almost a personality, and are occasionally really enthusiastic for principles, the party organization and especially the inner circle of party managers have for their end the acquisition of control and of office. This cannot all be explained on the ground of mere greed for positions and salaries, or by any simple and easy statement of impulse and motive. The statement is just as true of the English parties as of the American; and in England with a change of government—a noteworthy phrase—there is little change among the tenants of the civil service. And yet what do we find in England time and again, indeed with ludicrous repetition? We find a party looking for a principle. We ask ourselves quite seriously what principle must be accepted by the Conservatives to get into office, or what by the Liberals; we find over and over again that the party in power has accepted the principles of its opponents and has begun to put those ideas into operation, not without expressions of indignation from the former advocates of the doctrines, who expected by these means to get into office themselves. Such statements as these appear to be a severe condemnation of the whole party régime, and by most per-

sons they will not be accepted as true. But surely they have much truth in them; and our purpose here is not to indict parties or to praise them but to consider their characters and qualities. What do we mean when we say the Democratic party is looking for an issue? We mean at least—do we not?—that the party has a consistency, a being, quite removed from any body of doctrine or any hope of especial legislation or political accomplishment. It is easier to trace a party by its character than by its principles.

A political party may be truthfully defined—or its content roughly suggested—in some such way as this: it is a body of men, somewhat fluctuating in personnel and in numbers, who have begun work together to attain some political purpose or to oppose other men to whom for some reason they have felt antagonistic. This body, acquiring organization, and gradually developing *esprit de corps* and a sense of self, continues in existence even after its first purpose is accomplished or abandoned, indeed after it has lost a dominating purpose of any kind; it accepts new doctrines to wrest office from its opponents; its activities rest largely on tradition, on party name, on personal pride, and sometimes on a dominating principle. We should not be far wrong if we should declare that there are two or more great armies in existence, each controlled by a select few whose main ambition is victory, and that objects of the people's desire are attained by the organization's accepting a principle as a means of winning success. This does not mean that party leaders have no sincerity. It does mean that they have their full share of human nature, and that a party government would usually throw over a principle which it believed unpopular and likely to bring disaster. If this is not true, why

condemn Mr. Bryan for adhering to free silver when its advocacy had not brought success?

While principles are being hopefully advocated, most party leaders enthusiastically believe in them. This is a beneficent provision of Providence; because human nature is thus constituted, we get such self-government as we do have—a government, organized to get office and to manage government, absorbs popular principles and fights valiantly for their realization. This is also why a party must have a principle; for though it may live without a principle for years, it loses its usefulness, and finds its enlisted men, little by little, deserting. The history of the Whig party is thus explained; for years largely a party of opposition, living for some decades a party of opposition, living for some decades in incoherence and feeding on opportunism, it failed at a critical juncture to accept principles for which the people were beginning to ask organized championship; it "swallowed candidates and spat upon the platform;" it tried to exist by crying out against its opponents and by relying too long on the vague social and economic sympathies which had been its foundation and support.

We need not believe that a party without principles is necessarily unprincipled; it is for the moment unfortunate, not vicious—of course I am not speaking of any local machine that is organized merely for public plunder. We may be sure that leaders are anxiously scanning the horizon hoping for a breeze to fill their sails. But does not this mean that a party is not a body of men united for the purpose of carrying out a principle? Is it not plain that a party is a body of men who act together more or less coherently under discipline of party government and who accept a principle to win success? I am fully aware of the permanence of the tariff issue of the Re-

publican party. No doubt the leaders believe in it and perhaps they would not throw it aside to win the election; but anyone who thinks that the Republican party and the Republican organization do not exist outside of any principles has not thought very much of the significance of political phenomena. Above all, we should recognize that men are born into parties, and that the system exists as a social phenomenon, and that partisan compactness is due to the operation of forces in society and in human nature far beyond the advisability of mere doctrine.

This coherence of the elements of a party, even without reference to principles, has altered our constitutional system. We have on the face of the Constitution a republic made up of republics, each one of which is supposed to be interested in its own affairs and to manage them as it likes; and with these republics is a central government whose operations are confined to caring for a limited number of general interests. But although the Fathers sought to establish a *federal* state, they did establish *national* parties—a strange contradiction, for the tendency of these organizations from that day to this has been to transform the federal republic into a national republic. From these political associations, spreading over the whole country, reaching out into the remotest hamlet, came the unceasing pressure of the national idea. To-day the domination of the national party is nearly complete; there are no state parties which look after state issues and which are distinct from the parties and the policies that are of continental dimensions. In every step taken in ward or township, in every nomination made for local office, there is deference to the interests of the great national organization; local interests are nearly submerged; they are regarded occasionally only as the interests of the wider organization allow them to be.

When this system is complete, it means nothing more nor less than the disappearance of local self-government; it means a surrender of the local will and the local interest to a wider and stronger power without.

The force of parties as a nationalizing agency, and their influence for conservatism, was shown with especial clearness in the decade before the Civil War. How long the nation was held together by the strong ties of party affiliation it would be hard to say; how long, in other words, the fact of party delayed attempted secession. Party allegiance held leaders together, prompted them to deprecate sectional strife, and forced them to accept principles in which they otherwise would not have believed; it was stronger in some ways than fealty to the nation itself. Nearly every other bond was broken before these ties of party allegiance gave way. Even the church organization had in considerable measure disappeared before the Douglas Democrats in the Convention of 1860 refused to go the length demanded by the extreme proslavery element of the party. As the break-up of the Whig party eight years before had given the solemn warning, so the cleavage of the Democratic party was the end of the Union. The simple fact is this: if we look at the party as a real institution, as of course it is, we must realize that it was almost the last to yield to forces of disunion and disorganization; and, when it did yield, disunion was a fact. The national party proved the presence of national sentiment; but when once a party like the Democratic party was fairly organized, it had its own consistency, which remained to show astonishing powers of cohesion after sectional passions were aroused, after the real interests of the elements of the party were divergent.

I have said that under the unceasing pressure of national parties local self-determination has largely dis-

appeared. We have thus become in reality, if we are willing to see actualities and pass by appearances, a national rather than a federal state, because it is the will of the national organization which overrules local impulses. If we look at the situation a little more closely, we shall find that we have become not only a national state but a centralized state. It is easy, when one is trying to be precise and clear, to allow emphasis to become exaggeration, and my readers should be warned therefore that there are modifications to be made to my general assertions; but, when all is said, to what a marked extent are local affairs managed, without violent dictation, by the central authority of the party! The object of the party government is not to seek the will of the people and by diligent obedience do what the people may wish; it is not, above all, to give free play to local whim or fancies. A steady gentle pressure is laid upon the remotest school district of the country, in order that in all parts of the land the interests of the continental system may be first regarded. The central organization is busied in quietly and simply smoothing away local differences, in ironing out difficulties that may set the interests of the locality above the success of the whole. Year by year, power and authority do not pass up along the lines of influence from the road district to the committees at Washington; quite the reverse. The vastly complicated party mechanism is not made to obey or to register the behests of the people; it strives for uniformity; it seeks to put the tariff or free silver above good roads or a new schoolhouse or the personnel of a candidate for local office, if the contention over the new schoolhouse or the local candidate endangers partisan homogeneity.

Again let me say this is not pessimism, or even an attack on the party system or the party machine. The party

system must be maintained and the management is a necessity; but the tendency of all organization is toward uniformity; organization, whether it be religious organization, trade organization, or political organization, tends to perpetuate itself, to dominate, and above all to be out of patience with differences, peculiarities, local or personal idiosyncrasies. And this is so because system and individualism, system and local assertion, are inherently antagonistic. As well whistle to the whirlwind as to expect that any organization should not respond to the laws of its being.

The disappearance of federalism under the influence of nationalism is most obvious in the election of senators. The popular election of senators, as provided for by the new amendment submitted for adoption (1912), ought to be of value in disentangling state from national politics and policies; we may at least hope that it will in some measure set the state governments free and help in reestablishing federalism. For the trouble to be remedied is not the mere method of election by legislators, who are supposed to be approachable—to employ a euphemism. The trouble, or at least the fact, is that the method of electing senators has subjected state politics and state welfare to the interests of a national party. And here again is humorously plain the failure of the framers of the Constitution to see into the future and to do what they hoped. They constituted the Senate as it is, for many reasons; but the equal representation of the states was the result of a demand from the delegations of the smaller states, who feared that, unless such representation were allowed, they would be overridden by their larger neighbors or entirely absorbed by the national system. The Senate, it was supposed, would safeguard the interests of the states. But the system of election made it

impossible for the Senate to stand for retention of the real autonomy of the states. As soon as national parties were fairly organized, there was evident necessity of electing state legislators on national issues; to preserve the interests of the party, every effort had to be made to keep the legislature in line. A voter must subserve the interests of his national party by electing a legislator of that party, because a senator's election was at stake; and in consequence national issues were at once involved in every state election, and supremely so when the legislature was to elect a senator. The voter, filled with enthusiasm for his party, would be ready to cast his ballot for a scamp or to neglect every measure of local interest in order to save the senatorship.

Thus through the ceaseless influence of continental parties, the federal character as distinguished from the national character of the republic tended to disappear. Time and time again a party which had disgraced itself in state management, which was under the influence of a corrupt machine, and which was even acting in neglect of the most obvious interests of the commonwealth, has been retained in power, lest its defeat injure the party at large. One can understand how the citizens of Pennsylvania, out of regard for the tariff, are content with a corrupt party management, and even smilingly consent to pay for a state house and its furnishings several millions more than they cost; one can understand their placid acceptance of villainy when by such acceptance they assure a stand-pat policy on the tariff, if that is what is most dear to them. But one could not understand such subjection of common morals and of local interests, if there were no intimate connection between the tariff and the state house, and if our political system were so arranged that a state, without pressure from a national system and

a national issue, could look after its own housekeeping. The simple, unadorned truth is that, because of the stupendous organization of national parties in a so-called federal republic, federalism in its most desirable aspects has largely disappeared, and all local issues are so inextricably connected with national politics and dominated by national issues that the locality can with difficulty freely express itself on its own immediate business.

Someone will say that the people can avoid this subjection of state to national issues, if they so desire; that if the people divide on national party lines in electing aldermen and auditors and constables, it is because they wish to do so. That may be true in a sense. The people of Russia could throw off the power of the czar if they wished to. But my purpose is not to argue or to advocate, but to state facts. To say that the people can cast aside the domination of the national party régime is, however, to disregard the control of a powerful organization, a part of whose strength comes from the very multiplicity of local interests and commonness of the general interests; to disregard the influence of prejudice and pride and party allegiance; to fail to reckon with the imagination to which national party leaders and party contests strongly appeal; and, above all, not to estimate correctly the force of inertia and the sheer difficulty of maintaining state or local organizations distinct from the national party system; in short, to say that the people can if they wish is not to see the difficulty in the clinging tenaciously to complicated federalism instead of yielding to the simplicity of highly organized nationalism.

The situation in the South whimsically illustrates the general condition, because in that section forces are working in a direction quite opposite to that of which we have just spoken. The people of the South are confronted with

a difficult local problem and they fear the intrusion of one of the national parties. To subserve, therefore, their distinct particular desires, they continue to support a national party with whose purposes in general they may have little or no sympathy; or, to put the case more guardedly, such is undoubtedly the course of a good many men. Were it not for the local issue, the people in Georgia and Louisiana would presumably soon be divided into hostile companies on questions which separate the national organizations—if it can be said that national organizations are really divided on questions or principles. The people of Pennsylvania, believing for their benefit to adhere to the tariff party, subject their local politics and internal polity to an organization which is a cog—the flywheel more properly—in the general party mechanism. The people of the South, that they may deal with their own local difficulties, adhere to a party in which many of them at least have no particular interest; at all events they work in a party for many of whose tendencies they have no absorbing affection. Partly because local concerns are preëminently significant to them, dwarfing all matters of contention between great organizations, partly because of the force of tradition and the bitter deposit of memory, they vote solidly with a party with whom on the question of tariff, imperialism, money, or corporate influence they, or many of them, have no essential sympathy. The people of Pennsylvania, because of an industrial condition, and from phlegmatic inertia, subject local politics to a corrupt machine. The people of the South, that they may manage their own politics, accept the economic policy of the national party. If the Democratic party should obtain control of the national government and be in power for a considerable period—if I may be allowed a humorous suggestion—if it had general na-

tional principles of an industrial significance, and if the Republicans, breaking in on the traditional distrust of the South, could obtain a slight footing in that region, there would then be continuous pressure from the general Democratic organization to induce sturdy partisans to forget local issues and avoid factional struggles, lest the result of a cleavage within the party on some matter of state politics should give standing ground for Republican managers.

Party systems and the natural psychological trend of organization are inevitable. If we wish democratic government, we may possibly discover some scheme for managing the party and for transforming its leaders into servants and for retaining their obedience. That was what was accomplished through centuries of struggle against the kingship and against legal government; the government was made constitutional, and that means that it was controlled and checked by a power without. And perhaps by the accumulation of devices, in the course of time, parties may likewise be made responsive and responsible; we may find a new system of ministerial responsibility within the party. There is evidently an attempt to do this or something like it by recent legislation which strictly describes local party committees, and the time may not be far distant when the boss will be recognized as an official. Many times the boss, without holding any office, has been the real government. What value has mere nomenclature under such conditions?

There is, however, no chance of the disappearance of party and of party machinery. Can we not hope for a surcease of the outcry against party management as if it were something that could be done away with by a fit of anger or the sulks? Every movement to overcome it must itself be organized, and, like a party made up to champion

an idea, may live to accept reluctantly new ideas to perpetuate itself. At present our self-government depends on our ability to control the party management, as best we can, and, when it is evil or too dominating, to administer defeat. In Russia they are said to have despotism tempered by assassination. This is the system of government that we have in some of our states. The extent of the enlightenment of the despots depends on their good nature and the extent to which they fear annihilation or temporary despotism. In the restraining effect of a rebellion lies the value of reform movements, the temporary tempests, which are wont to elicit laughter from the experienced because in the course of a year or two the older organization is not again in the saddle. But let us not suppose that rulers laugh at insurrections. Fear of defeat will make even the local kinglet, safely guarded within his own winter palace, at least offer libations to virtue by presenting clean candidates for office. Surely, however, in the course of time we can do better than this; we ought to be able to work out a scheme of internal control that will make insurrections needless. Sometime we shall democratize and constitutionalize parties.

18. Invisible Government * [1]

The contributions of Elihu Root to good government have been very great. He has served his state and his nation with the greatest credit to himself and with the greatest benefit to his country. While acting as Chairman of the New York Constitutional Convention of 1915, he delivered the famous address given below in favor of the short ballot and of honest, open government.

I am going to discuss a subject now that goes back to the beginning of the political life of the oldest man in

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this convention, and one to which we cannot close our eyes, if we keep the obligations of our oath. We talk about the government of the constitution. We have spent many days in discussing the powers of this and that and the other officer. What is the government of this state? What has it been during the forty years of my acquaintance with it? The government of the Constitution? Oh, no; not half the time, nor half way. When I ask what do the people find wrong in our state government, my mind goes back to those periodic fits of public rage in which the people rouse up and tear down the political leader, first of one party and then of the other party. It goes back to the public feeling of resentment against the control of party organizations, of both parties and of all parties.

Now, I treat this subject in my own mind not as a personal question to any man. I am talking about the system. From the days of Fenton, and Conkling, and Arthur, and Cornell, and Platt, from the days of David B. Hill, down to the present time, the government of the state has presented two different lines of activity, one of the constitutional and statutory officers of the state, and the other of the party leaders—they call them party bosses. They call the system—I do not coin the phrase, I adopt it because it carries its own meaning—the system they call "invisible government." For I do not remember how many years Mr. Conkling was the supreme ruler in this state; the governor did not count, the legislatures did not count; comptrollers and secretaries of state and what not, did not count. It was what Mr. Conkling said: and in a great outburst of public rage he was pulled down.

Then Mr. Platt ruled the state; for nigh upon twenty years he ruled it. It was not the governor; it was not the legislature; it was not any elected officers; it was Mr.

Platt. And the capitol was not here; it was at 49 Broadway; with Mr. Platt and his lieutenants. It makes no difference what name you give, whether you call it Fenton or Conkling or Cornell or Arthur or Platt, or by the names of men now living. The ruler of the state during the greater part of the forty years of my acquaintance with the state government has not been any man authorized by the constitution or by the law; and, sir, there is throughout the length and breadth of this state a deep and sullen and long-continued resentment at being governed thus by men not of the people's choosing. The party leader is elected by no one, accounting to no one, bound by no oath of office, removable by no one. Ah! My friends here have talked about this bill's creating an autocracy. The word points with admirable facility the very opposite reason for the bill. It is to destroy autocracy and restore power so far as may be to the men elected by the people, accountable to the people, removable by the people. I don't criticize the men of the invisible government. How can I? I have known them all, and among them have been some of my dearest friends. I can never forget the deep sense of indignation I felt in the abuse that was heaped upon Chester A. Arthur, whom I honored and loved, when he was attacked because he held the position of political leader. But it is all wrong; it is all wrong that a government not authorized by the people should be continued superior to the government that is authorized by the people.

How is it accomplished? How is it done? Mr. Chairman, it is by the use of patronage, and the patronage that my friends on the other side of this question have been arguing and pleading for in this convention, is the power to continue that invisible government against that authorized by the people. Everywhere, sir, that these two sys-

tems of government coexist, there is a conflict day by day, and year by year, between two principles of appointment to office, two radically opposed principles. The elected officer or the appointed officer, the lawful officer who is to be held responsible for the administration of his office, desires to get men into the different positions of his office who will do their work in a way that is creditable to him and his administration. Whether it be a president appointing a judge, or a governor appointing a superintendent of public works, whatever it may be, the officer wants to make a success, and he wants to get the man selected upon the ground of his ability to do the work.

How is it about the boss? What does the boss have to do? He has to urge the appointment of a man whose appointment will consolidate his power and preserve the organization. The invisible government proceeds to build up and maintain its power by a reversal of the fundamental principle of good government, which is that men should be selected to perform the duties of the office; and to substitute the idea that men should be appointed to office for the preservation and enhancement of power of the political leader. The one, the true one, looks upon appointment to office with a view to the service that can be given to the public. The other, the false one, looks upon appointment to office with a view to what can be gotten out of it.

Gentlemen of the convention, I appeal to your knowledge of facts. Every one of you knows that what I say about the use of patronage under the system of invisible government is true. Louis Marshall told us the other day about the appointment of wardens in the Adirondacks, hotel keepers and people living there, to render no service whatever. They were appointed not for the service that

they were to render to the state; they were appointed for the service they were to render to promote the power of a political organization. Mr. Chairman, we all know that the halls of this capitol swarm with men during the session of the legislature on pay day. A great number, seldom here, rendering no service, are put on the payrolls as a matter of patronage, not of service, but of party patronage. Both parties are alike; all parties are alike. The system extends through all. Ah, Mr. Chairman, that system finds its opportunity in the division of powers, in a six-headed executive, in which, by the natural workings of human nature, there shall be opposition and discord and the playing of one force against the other; and so, when we refuse to make one governor elected by the people and the real chief executive, we make inevitable the setting up of a chief executive not selected by the people, not acting for the people's interest, but for the selfish interest of the few who control the party, whichever party it may be.

Think for a moment of what this patronage system means. How many of you are there who would be willing to do to your private client, or customer, or any private trust, or to a friend or neighbor, what you see being done to the state of New York every year of your lives in the taking of money out of her treasury without service? We can, when we are in a private station, pass on without much attention to inveterate abuses. We can say to ourselves, I know it is wrong, I wish it could be set right; it cannot be set right, I will do nothing. But here, we face the duty, we cannot escape it, we are bound to do our work, face to face, in clear recognition of the truth, unpalatable, deplorable as it may be, and the truth is that what the unerring instinct of the democracy of our state has seen in this government is, that a different standard

of morality is applied to the conduct of affairs of state than that which is applied in private affairs. I have been told forty times since this convention met that you cannot change it. We can try, can we not? I deny that we cannot change it. I repel that cynical assumption which is born of the lethargy that comes from poisoned air during all these years. I assert that this perversion of democracy this robbing democracy of its virility, can be changed as truly as the system under which Walpole governed the commons of England, by bribery, as truly as the atmosphere which made the Credit Mobilier scandal possible in the Congress of the United States, has been blown away by the force of public opinion. We cannot change it in a moment, but we can do our share. We can take this one step toward, not robbing the people of their part in government, but toward robbing an irresponsible autocracy of its indefensible and unjust and undemocratic control of government, and restoring it to the people to be exercised by the men of their choice and their control.

19. The College Man in Politics *[1]

This essay written by Roosevelt contains good advice for the college man. Roosevelt was both a college man and a politician, and was well qualified to speak about politics.

Yet again, college men must learn to be as practical in politics as they would be in business or in law. It is surely unnecessary to say that by "practical" I do not mean anything that savors in the least of dishonesty. On the contrary, a college man is peculiarly bound to keep a high ideal and to be true to it; but he must work in practical ways to try to realize this ideal, and must not

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refuse to do anything because he cannot get everything. One especially necessary thing is to know the facts by actual experience, and not to take refuge in mere theorizing. There are always a number of excellent and well-meaning men whom we grow to regard with amused impatience because they waste all their energies on some visionary scheme which, even if it were not visionary, would be useless. When they come to deal with political questions, these men are apt to err from sheer lack of familiarity with the workings of our government. No man ever really learned from books how to manage a governmental system. Books are admirable adjuncts, and the statesman who has carefully studied them is far more apt to do good work than if he had not; but if he has never done anything but study books he will not be a statesman at all. Thus, every young politician should of course read "The Federalist." It is the greatest book of the kind that has ever been written. Hamilton, Madison, and Jay would have been poorly equipped for writing it if they had not possessed an extensive acquaintance with literature, and in particular if they had not been careful students of political literature; but the great cause of the value of their writings lay in the fact that they knew by actual work and association what practical politics meant. They had helped to shape the political thought of the country, and to do its legislative and executive work, and so they were in a condition to speak understandingly about it. For similar reasons, Mr. Bryce's "American Commonwealth" has a value possessed by no other book of the kind, largely because Mr. Bryce is himself an active member of Parliament, a man of good standing and some leadership in his own party, and a practical politician. In the same way, a life of Washington by Cabot Lodge, a sketch of Lincoln by Carl Schurz, a biography

of Pitt by Lord Rosebery, have an added value because of the writer's own work in politics.

There are certain other qualities, about which it is hardly necessary to speak. If an educated man is not heartily American in instinct and feeling and taste and sympathy, he will amount to nothing in our public life. Patriotism, love of country, and pride in the flag which symbolizes country may be feelings which the race will at some period outgrow, but at present they are very real and strong, and the man who lacks them is a useless creature, a mere incumbrance to the land.

A man of sound political instincts can no more subscribe to the doctrine of absolute independence of party on the one hand than to that of unquestioning party allegiance on the other. No man can accomplish much unless he works in an organization with others, and this organization, no matter how temporary, is a party for the time being. But that man is a dangerous citizen who so far mistakes means for ends as to become servile in his devotion to his party, and afraid to leave it when the party goes wrong. To deify either independence or party allegiance merely as such is a little absurd. It depends entirely upon the motive, the purpose, the result. For the last two years, the senator who, beyond all his colleagues in the United States Senate, has shown himself independent of party ties is the very man to whom the leading champions of independence in politics most strenuously object. The truth is, simply, that there are times when it may be the duty of a man to break with his party, and there are other times when it may be his duty to stand by his party, even though, on some points, he thinks that party wrong; he must be prepared to leave it when necessary, and he must not sacrifice his influence by leaving it unless it is necessary. If we had no party al-

legiance, our politics would become mere windy anarchy, and, under present conditions, our government could hardly continue at all. If we had no independence, we should always be running the risk of the most degraded kind of despotism—the despotism of the party boss and the party machine.

In conclusion, then, the man with a university education is in honor bound to take an active part in our political life, and to do his full duty as a citizen by helping his fellow citizens to the extent of his power in the exercise of the rights of self-government. He is bound to rank action far above criticism, and to understand that a man deserving of credit is the man who actually does the things, even though imperfectly, and not the man who confines himself to talking about how they ought to be done. He is bound to have a high ideal and to strive to realize it, and yet he must make up his mind that he will never be able to get the highest good, and that he must devote himself with all his energy to getting the best that he can. Finally, his work must be disinterested and honest, and it must be given without regard to his own success or failure, and without regard to the effect it has upon his own fortunes; and while he must show the virtues of uprightness and tolerance and gentleness, he must also show the sterner virtues of courage, resolution, and hardihood, and the desire to war with merciless effectiveness against the existence of wrong.

CHAPTER V

THE PRESIDENCY

20. Unity of the Presidential Office[1]

Chancellor Kent, from whose "Commentaries" this selection is taken, was one of the first lawyers in this country to present a systematic treatment of American law. His long experience as judge, chief justice, and chancellor of the highest court of New York state, and his undoubted ability, gave him great influence upon American jurisprudence during the formative period.

The object of this department is the execution of the law; and good policy dictates that it should be organized in the mode best calculated to attain that end with precision and fidelity. Consultation is necessary in the making of laws. The defect or grievance they are intended to remove must be distinctly perceived, and the operation of the remedy upon the interests, morals, and the opinion of the community profoundly considered. A comprehensive knowledge of the great interests of the nation, in all their complicated relations and practical details, seems to be required in sound legislation; and it shows the necessity of a free, full, and perfect representation of the people, in the body intrusted with the legislative power. But when laws are duly made and promulgated, they only remain to be executed. No discretion is submitted to the executive officer. It is not for him to deliberate and decide upon the wisdom or expediency of the

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law. What has been once declared to be law, under all the cautious forms of deliberation prescribed by the Constitution, ought to receive prompt obedience. The characteristical qualities required in the executive department are promptitude, decision, and force; and these qualities are most likely to exist when the executive authority is limited to a single person, moving by the unity of a single will. Division, indecision, and delay are exceedingly unfavorable to that steady and vigorous administration of the law which is necessary to secure tranquillity at home, and command the confidence of foreign nations. Every government, ancient and modern, which has been constituted on different principles, and adopted a compound executive, has suffered the evils of it; and the public interest has been sacrified, or it has languished under the inconveniences of an imbecile or irregular administration. In those states which have tried the project of executive councils, the weakness of them has been strongly felt and strikingly displayed; and in some instances in which they have been tried (as in Pennsylvania and Georgia), they were soon abandoned, and a single executive magistrate created, in accordance with the light afforded by their own experience, as well as by the institutions of their neighbors.

Unity increases not only the efficacy, but the responsibility of the executive power. Every act can be immediately traced and brought home to the proper agent. There can be no concealment of the real author, nor, generally, of the motives of public measures, when there are no associates to divide or to mask responsibility. There will be much less temptation to depart from duty, and much greater solicitude for reputation, when there are no partners to share the odium, or to communicate confidence by their example. The eyes of the people will

be constantly directed to a single conspicuous object; and, for these reasons, De Lolme considered it to be a sound axiom of policy, that the executive power was more easily confined when it was one. "If the execution of the laws," he observes, "be intrusted to a number of hands, the true cause of public evils is hidden. Tyranny, in such states, does not always beat down the fences that are set around it, but it leaps over them. It mocks the efforts of the people, not because it is invincible, but because it is unknown." The justness of these reflections might be illustrated and confirmed by a review of the proceedings of the former council of appointment in New York, under the Constitution of 1777. All efficient responsibility was there lost, by reason of the constant change of the members, and the difficulty of ascertaining the individual to whom the origin of a bad appointment was to be attributed.

21. Independence of the Executive *

Grover Cleveland left a definite impress upon the Presidency. He felt strongly that in the definite separation of powers lay the hope of efficient government, and as President he would brook no interference by Congress with his constitutional rights. His views of the scope of the President's powers were somewhat similar to those held later by Roosevelt and Wilson. The following message to the Senate, which was at that time attempting to hamper him in his removals of public officials as they had previously hampered President Johnson, resulted in one of the most important and far-reaching conflicts of his first administration. His firm reassertion of executive independence in this message stands as a monument in the development of the office of President.

Ever since the beginning of the present session of the Senate the different heads of the Departments attached

to the executive branch of the Government have been plied with various requests and demands from committees of the Senate, from members of such committees, and at last from the Senate itself, requiring the transmission of reasons for the suspension of certain officials during the recess of that body, or for the papers touching the conduct of such officials, or for all papers and documents relating to such suspensions, or for all documents and papers filed in such Departments in relation to the management and conduct of the offices held by such suspended officials.

The different terms from time to time adopted in making these requests and demands, the order in which they succeeded each other, and the fact that when made by the Senate the resolution for that purpose was passed in executive session have led to the presumption, the correctness of which will, I suppose, be candidly admitted, that from first to last the information thus sought and the papers thus demanded were desired for use by the Senate and its committees in considering the propriety of the suspensions referred to.

Though these suspensions are my executive acts, based upon considerations addressed to me alone and for which I am wholly responsible, I have had no invitation from the Senate to state the position which I have felt constrained to assume in relation to the same or to interpret for myself my acts and motives in the premises.

In this condition of affairs I have forborne addressing the Senate upon the subject, lest I might be accused of thrusting myself unbidden upon the attention of that body.

But the report of the Committee on the Judiciary of the Senate lately presented and published, which censures the Attorney-General of the United States for his refusal to

transmit certain papers relating to a suspension from office, and which also, if I correctly interpret it, evinces a misapprehension of the position of the Executive upon the question of such suspensions, will, I hope, justify this communication.

I do not suppose that "the public offices of the United States" are regulated or controlled in their relations to either House of Congress by the fact that they were "created by laws enacted by themselves." It must be that these instrumentalities were created for the benefit of the people and to answer the general purposes of government under the Constitution and the laws, and that they are unencumbered by any lien in favor of either branch of Congress growing out of their construction, and unembarrassed by any obligation to the Senate as the price of their creation.

The complaint of the committee that access to official papers in the public offices is denied the Senate is met by the statement that at no time has it been the disposition or the intention of the President or any Department of the executive branch of the Government to withhold from the Senate official documents or papers filed in any of the public offices. While it is by no means conceded that the Senate has the right in any case to review the act of the Executive in removing or suspending a public officer, upon official documents or otherwise, it is considered that documents and papers of that nature should, because they are official, be freely transmitted to the Senate upon its demand, trusting the use of the same for proper and legitimate purposes to the good faith of that body; and though no such paper or document has been specifically demanded in any of the numerous requests and demands made upon the Departments, yet as often as

they were found in the public offices they have been furnished in answer to such applications.

Everything that had been written or done on behalf of the Senate from the beginning pointed to all letters and papers of a private and unofficial nature as the objects of search, if they were to be found in the Departments, and provided they had been presented to the Executive with a view to their consideration upon the question of suspension from office.

Against the transmission of such papers and documents I have interposed my advice and direction. This has not been done, as is suggested in the committee's report, upon the assumption on my part that the Attorney-General or any other head of a Department "is the servant of the President, and is to give or withhold copies of documents in his office according to the will of the Executive and not otherwise," but because I regard the papers and documents withheld and addressed to me or intended for my use and action purely unofficial and private, not infrequently confidential, and having reference to the performance of a duty exclusively mine. I consider them in no proper sense as upon the files of the Department, but as deposited there for my convenience, remaining still completely under my control. I suppose if I desired to take them into my custody I might do so with entire propriety, and if I saw fit to destroy them no one could complain.

The papers and documents which have been described derived no official character from any constitutional, statutory, or other requirement making them necessary to the performance of the official duty of the Executive.

It will not be denied, I suppose, that the President may suspend a public officer in the entire absence of any papers or documents to aid his official judgment and discretion;

and I am quite prepared to avow that the cases are not few in which suspension from office have depended more upon oral representations made to me by citizens of known good repute and by members of the House of Representatives and Senators of the United States than upon any letters and documents presented for my examination. I have not felt justified in suspecting the veracity, integrity, and patriotism of Senators, or ignoring their representations, because they were not in party affiliation with the majority of their associates; and I recall a few suspensions which bear the approval of individual members identified politically with the majority of the Senate.

While, therefore, I am constrained to deny the right of the Senate to the papers and documents described, so far as the right to the same is based upon the claim that they are in any view of the subject official, I am also led unequivocally to dispute the right of the Senate by the aid of any documents whatever, or in any way save through the judicial process of trial on impeachment, to review or reverse the acts of the Executive in the suspension, during the recess of the Senate, of Federal officials.

I believe the power to remove or suspend such officials is vested in the President alone by the Constitution, which in express terms provides that "the executive power shall be vested in a President of the United States of America," and that "he shall take care that the laws be faithfully executed."

The Senate belongs to the legislative branch of the Government. When the Constitution by express provision superadded to its legislative duties the right to advise and consent to appointments to office and to sit as a court of impeachment, it conferred upon that body all the control and regulation of Executive action supposed to be necessary for the safety of the people; and this ex-

press and special grant of such extraordinary powers, not in any way related to or growing out of general Senatorial duty, and in itself a departure from the general plan of our Government, should be held, under a familiar maxim of construction, to exclude every other right of interference with Executive functions.

In the first Congress which assembled after the adoption of the Constitution, comprising many who aided in its preparation, a legislative construction was given to that instrument in which the independence of the Executive in the matter of removals from office was fully sustained.

I think it will be found that in the subsequent discussions of this question there was generally, if not at all times, a proposition pending to in some way curtail this power of the President by legislation, which furnishes evidence that to limit such power it was supposed to be necessary to supplement the Constitution by such legislation.

The first enactment of this description was passed under a stress of partisanship and political bitterness which culminated in the President's impeachment.

This law provided that the Federal officers to which it applied could only be suspended during the recess of the Senate when shown by evidence satisfactory to the President to be guilty of misconduct in office, or crime, or when incapable or disqualified to perform their duties, and that within twenty days after the next meeting of the Senate it should be the duty of the President "to report to the Senate such suspension, with the evidence and reasons for his action in the case."

This statute, passed in 1867, when Congress was overwhelmingly and bitterly opposed politically to the President, may be regarded as an indication that even then it

was thought necessary by a Congress determined upon the subjugation of the Executive to the legislative will to furnish itself a law for that purpose, instead of attempting to reach the object intended by an invocation of any pretended constitutional right.

The law which thus found its way to our statute book was plain in its terms, and its intent needed no avowal. If valid and now in operation, it would justify the present course of the Senate and command the obedience of the Executive to its demands. It may, however, be remarked in passing that under this law the President had the privilege of presenting to the body which assumed to review his executive acts his reasons therefore, instead of being excluded from explanation or judged by papers found in the Departments.

Two years after the law of 1867 was passed, and within less than five weeks after the inauguration of a President in political accord with both branches of Congress, the sections of the act regulating suspensions from office during the recess of the Senate were entirely repealed, and in their place were substituted provisions which, instead of limiting the causes of suspension to misconduct, crime, disability, or disqualification, expressly permitted such suspension by the President "in his discretion," and completely abandoned the requirement obliging him to report to the Senate "the evidence and reasons" for his action.

With these modifications and with all branches of the Government in political harmony, and in the absence of partisan incentive to captious obstruction, the law as it was left by the amendment of 1869 was much less destructive of Executive discretion. And yet the great general and patriotic citizen who on the 4th day of March, 1869, assumed the duties of Chief Executive, and for

whose freer administration of his high office the most hateful restraints of the law of 1869 were, on the 5th day of April, 1869, removed, mindful of his obligation to defend and protect every prerogative of his great trust, and apprehensive of the injury threatened the public service in the continued operation of these statutes even in their modified form, in his first message to Congress advised their repeal and set forth their unconstitutional character.

And so it happens that after an existence of nearly twenty years of almost innocuous desuetude these laws are brought forth—apparently the repealed as well as the unrepealed—and put in the way of an Executive who is willing, if permitted, to attempt an improvement in the methods of administration.

The constitutionality of these laws is by no means admitted. But why should the provisions of the repealed law, which required specific cause for suspension and a report to the Senate of "evidence and reasons," be now in effect applied to the present Executive, instead of the law, afterwards passed and unrepealed, which distinctly permits suspensions by the President "in his discretion" and carefully omits the requirement that "evidence and reasons for his action in the case" shall be reported to the Senate.

The requests and demands which by the score have for nearly three months been presented to the different Departments of the Government, whatever may be their form, have but one complexion. They assume the right of the Senate to sit in judgment upon the exercise of my exclusive discretion and Executive function, for which I am solely responsible to the people from whom I have so lately received the sacred trust of office. My oath to support and defend the Constitution, my duty to the

people who have chosen me to execute the powers of their great office and not to relinquish them, and my duty to the Chief Magistracy, which I must preserve unimpaired in all its dignity and vigor, compel me to refuse compliance with these demands.

To the end that the service may be improved, the Senate is invited to the fullest scrutiny of the persons submitted to them for public office, in recognition of the constitutional power of that body to advise and consent to their appointment. I shall continue, as I have thus far done, to furnish, at request of the confirming body, all the information I possess touching the fitness of the nominees placed before them for their action, both when they are proposed to fill vacancies and to take the place of suspended officials. Upon a refusal to confirm I shall not assume the right to ask the reasons for the action of the Senate nor question its determination. I can not think that anything more is required to secure worthy incumbents in public office than a careful and independent discharge of our respective duties within their well-defined limits.

Though the propriety of suspensions might be better assured if the action of the President was subject to review by the Senate, yet if the Constitution and the laws have placed this responsibility upon the executive branch of the Government it should not be divided nor the discretion which it involves relinquished.

It has been claimed that the present Executive having pledged himself not to remove officials except for cause, the fact of their suspension implies such misconduct on the part of a suspended official as injures his character and reputation, and therefore the Senate should review the case for his vindication.

I have said that certain officials should not, in my

opinion, be removed during the continuance of the term for which they were appointed solely for the purpose of putting in their place those in political affiliation with the appointing power, and this declaration was immediately followed by a description of official partisanship which ought not to entitle those in whom it was exhibited to consideration. It is not apparent how an adherence to the course thus announced carries with it the consequences described. If in any degree the suggestion is worthy of consideration, it is to be hoped that there may be a defense against unjust suspension in the justice of the Executive.

Every pledge which I have made by which I have placed a limitation upon my exercise of executive power has been faithfully redeemed. Of course the pretense is not put forth that no mistakes have been committed; but not a suspension has been made except it appeared to my satisfaction that the public welfare would be improved thereby. Many applications for suspension have been denied, and the adherence to the rule laid down to govern my action as to such suspensions has caused much irritation and impatience on the part of those who have insisted upon more changes in the offices.

The pledges I have made were made to the people, and to them I am responsible for the manner in which they have been redeemed. I am not responsible to the Senate, and I am unwilling to submit my actions and official conduct to them for judgment.

There are no grounds for an allegation that the fear of being found false to my professions influences me in declining to submit to the demands of the Senate. I have not constantly refused to suspend officials, and thus incurred the displeasure of political friends, and yet willfully broken faith with the people for the sake of being false to them.

Neither the discontent of party friends, nor the allurements constantly offered of confirmations of appointees conditioned upon the avowal that suspensions have been made on party grounds alone, nor the threat proposed in the resolutions now before the Senate that no confirmations will be made unless the demands of that body be complied with, are sufficient to discourage or deter me from following in the way which I am convinced leads to better government for the people.

22. Use of the Veto Power

President Cleveland used the veto power more than any President since his time. Most of his vetoes related to private bills granting pensions, but here his negative is interposed to prevent the enactment of a so-called Rivers and Harbors bill which he found to be loaded with too much "pork." Similar bills come up regularly in Congress, and in their passage through that body they generally become loaded with a variety of provisions of doubtful public value.

I return herewith without approval House bill No. 7977, entitled "An act making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes."

There are 417 items of appropriation contained in this bill, and every part of the country is represented in the distribution of its favors.

It directly appropriates or provides for the immediate expenditure of nearly $14,000,000 for river and harbor work. This sum is in addition to appropriations contained in another bill for similar purposes amounting to a little more than $3,000,000, which have already been favorably considered at the present session of Congress.

The result is that the contemplated immediate expenditures for the objects mentioned amount to about $17,000,000.

A more startling feature of this bill is its authorization of contracts for river and harbor work amounting to more than $62,000,000. Though the payments on these contracts are in most cases so distributed that they are to be met by future appropriations, more than $3,000,000 on their account are included in the direct appropriations above mentioned. Of the remainder, nearly $20,000,000 will fall due during the fiscal year ending June 30, 1898, and amounts somewhat less in the years immediately succeeding. A few contracts of a like character authorized under previous statutes are still outstanding, and to meet payments on these more than $4,000,000 must be appropriated in the immediate future.

If, therefore, this bill becomes a law, the obligations which will be imposed on the Government, together with the appropriations made for immediate expenditure on account of rivers and harbors, will amount to about $80,000,000. Nor is this all. The bill directs numerous surveys and examinations which contemplate new work and further contracts and which portend largely increased expenditures and obligations.

There is no ground to hope that in the face of persistent and growing demands the aggregate of appropriations for the smaller scheme, not covered by contracts, will be reduced or even remain stationary. For the fiscal year ending June 30, 1898, such appropriations, together with the installments on contracts which will fall due in that year, can hardly be less than $30,000,000; and it may reasonably be apprehended that the prevalent tendency toward increased expenditures of this sort and the concealment which postponed payments afford for extravagance will increase the burdens chargeable to this account in succeeding years.

In view of the obligation imposed upon me by the Con-

stitution, it seems to me quite clear that I only discharge a duty to our people when I interpose my disapproval of the legislation proposed.

Many of the objects for which it appropriates public money are not related to the public welfare, and many of them are palpably for the benefit of limited localities or in aid of individual interests.

On the face of the bill it appears that not a few of these alleged improvements have been so improvidently planned and prosecuted that after an unwise expenditure of millions of dollars new experiments for their accomplishment have been entered upon.

While those intrusted with the management of public funds in the interest of all the people can hardly justify questionable expenditures for public work by pleading the opinions of engineers or others as to the practicability of such work, it appears that some of the projects for which appropriations are proposed in this bill have been entered upon without the approval or against the objections of the examining engineers.

I learn from official sources that there are appropriations contained in the bill to pay for work which private parties have actually agreed with the Government to do in consideration of their occupancy of public property.

Whatever items of doubtful propriety may have escaped observation or may have been tolerated in previous Executive approvals of similar bills, I am convinced that the bill now under consideration opens the way to insidious and increasing abuses and is in itself so extravagant as to be especially unsuited to these times of depressed business and resulting disappointment in Government revenue. This consideration is emphasized by the prospect that the public Treasury will be confronted with other appropria-

tions made at the present session of Congress amounting to more than $500,000,000.

Individual economy and careful expenditure are sterling virtues which lead to thrift and comfort. Economy and the exaction of clear justification for the appropriation of public moneys by the servants of the people are not only virtues, but solemn obligations.

To the extent that the appropriations contained in this bill are instigated by private interests and promote local or individual projects their allowance can not fail to stimulate a vicious paternalism and encourage a sentiment among our people, already too prevalent, that their attachment to our Government may properly rest upon the hope and expectation of direct and especial favors and that the extent to which they are realized may furnish an estimate of the value of governmental care.

I believe no greater danger confronts us as a nation than the unhappy decadence among our people of genuine and trustworthy love and affection for our Government as the embodiment of the highest and best aspirations of humanity, and not as the giver of gifts, and because its mission is the enforcement of exact justice and equality, and not the allowance of unfair favoritism.

I hope I may be permitted to suggest, at a time when the issue of Government bonds to maintain the credit and financial standing of the country is a subject of criticism, that the contracts provided for in this bill would create obligations of the United States amounting to $62,000,000 no less binding than its bonds for that sum.

23. The President [1]

Mr. Wilson's theory of the Presidency is given here with that clarity and wisdom which distinguished him as a great writer

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and statesman. Although this lecture was delivered several years before Mr. Wilson became President, it foreshadows the attitude toward the Presidency which he later assumed. But his words here do far more than state a theory—they portray the powers and duties, and opportunities, as well as the political significance of the office which he filled with such great ability.

It is difficult to describe any single part of a great governmental system without describing the whole of it. Governments are living things and operate as organic wholes. Moreover, governments have their natural evolution and are one thing in one age, another in another. The makers of the Constitution constructed the federal government upon a theory of checks and balances which was meant to limit the operation of each part and allow to no single part or organ of it a dominating force; but no government can be successfully conducted upon so mechanical a theory. Leadership and control must be lodged somewhere; the whole art of statesmanship is the art of bringing the several parts of government into effective coöperation for the accomplishment of particular common objects—and party objects at that. Our study of each part of our federal system, if we are to discover our real government as it lives, must be made to disclose to us its operative coördination as a whole: its places of leadership, its method of action, how it operates, what checks it, what gives it energy and effect. Governments are what politicians make them, and it is easier to write of the President than of the presidency.

The government of the United States was constructed upon the Whig theory of political dynamics, which was a sort of unconscious copy of the Newtonian theory of the universe. In our own day, whenever we discuss the structure or development of anything, whether in nature or in society, we consciously or unconsciously follow Mr.

Darwin; but before Mr. Darwin, they followed Newton. Some single law, like the law of gravitation, swung each system of thought and gave it its principle of unity. Every sun, every planet, every free body in the spaces of the heavens, the world itself, is kept in its place and reined to its course by the attraction of bodies that swing with equal order and precision about it, themselves governed by the nice poise and balance of forces which give the whole system of the universe its symmetry and perfect adjustment. The Whigs had tried to give England a similar constitution. They had had no wish to destroy the throne, no conscious desire to reduce the king to a mere figurehead, but had intended only to surround and offset him with a system of constitutional checks and balances which should regulate his otherwise arbitrary course and make it at least always calculable.

They had made no clear analysis of the matter in their own thoughts; it has not been the habit of English politicians, or indeed of English-speaking politicians on either side of the water, to be clear theorists. It was left to a Frenchman to point out to the Whigs what they had done. They had striven to make Parliament so influential in the making of laws and so authoritative in the criticism of the king's policy that the king could in no matter have his own way without their coöperation and assent, though they left him free, the while, if he chose, to interpose an absolute veto upon the acts of Parliament. They had striven to secure for the courts of law as great an independence as possible, so that they might be neither overawed by parliament nor coerced by the king. In brief, as Montesquieu pointed out to them in his lucid way, they had sought to balance executive, legislature, and judiciary off against one another by a series of checks and counterpoises, which

Newton might readily have recognized as suggestive of the mechanisms of the heavens.

The makers of our federal Constitution followed the scheme as they found it expounded in Montesquieu, followed it with genuine scientific enthusiasm. The admirable expositions of the Federalist read like thoughtful applications of Montesquieu to the political needs and circumstances of America. They are full of the theory of checks and balances. The President is balanced off against Congress, Congress against the President, and each against the courts. Our statesmen of the earlier generations quoted no one so often as Montesquieu, and they quoted him always as a scientific standard in the field of politics. Politics is turned into mechanics under his touch. The theory of gravitation is supreme.

The trouble with the theory is that government is not a machine, but a living thing. It falls, not under the theory of the universe, but under the theory of organic life. It is accountable to Darwin, not to Newton. It is modified by its environment, necessitated by its tasks, shaped to its functions by the sheer pressure of life. No living thing can have its organs offset against each other as checks, and live. On the contrary, its life is dependent upon their quick coöperation, their ready response to the commands of instinct or intelligence, their amicable community of purpose. Government is not a body of blind forces; it is a body of men, with highly differentiated functions, no doubt, in our modern day of specialization but with a common task and purpose. Their coöperation is indispensable, their warfare fatal. There can be no successful government without leadership or without the intimate, almost instinctive, coördination of the organs of life and action. This is not theory, but fact, and displays its force as fact, whatever theories may be thrown across

its track. Living political constitutions must be Darwinian in structure and in practice.

Fortunately, the definitions and prescriptions of our constitutional law, though conceived in the Newtonian spirit and upon the Newtonian principle, are sufficiently broad and elastic to allow for the play of life and circumstance. Though they were Whig theorists, the men who framed the federal Constitution were also practical statesmen with an experienced eye for affairs and a quick practical sagacity in respect of the actual structure of government, and they have given us a thoroughly workable model. If it had in fact been a machine governed by mechanically automatic balances, it would have had no history; but it was not, and its history has been rich with the influences and personalities of the men who have conducted it and made it a living reality. The government of the United States has had a vital and normal organic growth and has proved itself eminently adapted to express the changing temper and purposes of the American people from age to age.

That is the reason why it is easier to write of the President than of the presidency. The presidency has been one thing at one time, another at another, varying with the man who occupied the office and with the circumstances that surrounded him. One account must be given of the office during the period 1789 to 1825, when the government was getting its footing both at home and abroad, struggling for its place among the nations and its full credit among its own people; when English precedents and traditions were strongest; and when the men chosen for the office were men bred to leadership in a way that attracted to them the attention and confidence of the whole country. Another account must be given of it during Jackson's time, when an imperious man, bred not in delib-

erative assemblies or quiet councils, but in the field and upon a rough frontier, worked his own will upon affairs, with or without formal sanction of law, sustained by a clear undoubting conscience and the love of a people who had grown deeply impatient of the régime he had supplanted. Still another account must be given of it during the years 1836 to 1861, when domestic affairs of many debatable kinds absorbed the country, when Congress necessarily exercised the chief choices of policy, and when the Presidents who followed one another in office lacked the personal force and initiative to make for themselves a leading place in counsel. After that came the Civil War and Mr. Lincoln's unique task and achievement, when the executive seemed for a little while to become by sheer stress of circumstances the whole government, Congress merely voting supplies and assenting to necessary laws, as Parliament did in the time of the Tudors. From 1865 to 1898 domestic questions, legislative matters in respect of which Congress had naturally to make the initial choice, legislative leaders the chief decisions of policy, came once more to the front, and no President except Mr. Cleveland played a leading and decisive part in the quiet drama of our national life. Even Mr. Cleveland may be said to have owed his great rôle in affairs to his own native force and the confused politics of the time, than to any opportunity of leadership naturally afforded him by a system which had subordinated so many Presidents before him to Congress. The war with Spain again changed the balance of parts. Foreign questions became leading questions again, as they had been in the first days of the government, and in them the President was of necessity leader. Our new place in the affairs of the world has since that year of transformation kept him at the front of

our government, where our own thoughts and the attention of men everywhere is centered upon him.

Both men and circumstances have created these contrasts in the administration and influence of the office of President. We have all been disciples of Montesquieu, who once remarked that it was no proof of the excellence of the Constitution of the United States that the Americans had operated it with conspicuous success because the Americans could run any constitution successfully; and, while the compliment is altogether acceptable, it is certainly true that our practical sense is more noticeable than our theoretical consistency, and that, while we were once all constitutional lawyers, we are in these latter days apt to be very impatient of literal and dogmatic interpretations of constitutional principle.

The makers of the Constitution seem to have thought of the President as what the stricter Whig theorists wished the king to be; only the legal executive, the presiding and guiding authority in the application of law and the execution of policy. His veto upon legislation was only his "check" on Congress,—was a power of restraint, not of guidance. He was empowered to prevent bad laws, but he was not to be given an opportunity to make good ones. As a matter of fact he has become very much more. He has become the leader of his party and the guide of the nation in political purpose, and therefore in legal action. The constitutional structure of the government has hampered and limited his action in these significant rôles, but it has not prevented it. The influence of the President has varied with the men who have been Presidents and with the circumstances of their times, but the tendency has been unmistakably disclosed, and springs out of the very nature of government itself. It is merely the proof that our government is a living, organic thing, and must,

like every other government, work out the close synthesis of active parts which can exist only when leadership is lodged in some one man or group of men. You cannot compound a successful government out of antagonisms. Greatly as the practice and influence of Presidents has varied, there can be no mistaking the fact that we have grown more and more inclined from generation to generation to look to the President as the unifying force in our complex system, the leader both of his party and of the nation. To do so is not inconsistent with the actual provisions of the Constitution; it is only inconsistent with a very mechanical theory of its meaning and intention. The Constitution contains no theories. It is as practical a document as Magna Carta.

The rôle of party leader is forced upon the President by the method of his selection. The theory of the makers of the Constitution may have been that the presidential electors would exercise a real choice, but it is hard to understand how, as experienced politicians, they can have expected anything of the kind. They did not provide that the electors should meet as one body for consultation and make deliberate choice of a President and Vice-President, but that they should meet "in their respective states" and cast their ballots in separate groups, without the possibility of consulting and without the least likelihood of agreeing, unless some such means as have actually been used were employed to suggest and determine their choice beforehand. It was the practice at first to make party nominations for the presidency by congressional caucus. Since the Democratic upheaval of General Jackson's time nominating conventions have taken the place of congressional caucuses; and the choice of Presidents by party conventions has had some very interesting results.

We are apt to think of the choice of nominating con-

ventions as somewhat haphazard. We know, or think that we know, how their action is sometimes determined, and the knowledge makes us very uneasy. We know that there is no debate in nominating conventions, no discussion of the merits of the respective candidates, at which the country can sit as audience and assess the wisdom of the final choice. If there is any talking to be done, aside from the formal addresses of the temporary and permanent chairmen and of those who present the platform and the names of the several aspirants for nomination, the assembly adjourns. The talking that is to decide the result must be done in private committee rooms and behind the closed doors of the headquarters of the several state delegations to the convention. The intervals between sessions are filled with a very feverish activity. Messengers run from one headquarters to another until the small hours of the morning. Conference follows conference in a way that is likely to bring newspaper correspondents to the verge of despair, it being next to impossible to put the rumors together into any coherent story of what is going on. Only at the rooms of the national committee of the party is there any clear knowledge of the situation as a whole; and the excitement of the members of the convention rises from session to session under the sheer pressure of uncertainty. The final majority is compounded no outsider and few members can tell how.

Many influences, too, play upon nominating conventions, which seem mere winds of feeling. They sit in great halls, with galleries into which crowd thousands of spectators from all parts of the country, but chiefly, of course, from the place at which the convention sits, and the feeling of the galleries is transmitted to the floor. The cheers of mere spectators echo the names of popular candidates, and every excitement on the floor is enhanced a

hundred fold in the galleries. Sudden gusts of impulse are apt to change the whole feeling of the convention, and offset in a moment the most careful arrangements of managing politicians. It has come to be a commonly accepted opinion that if the Republican convention of 1860 had not met in Chicago, it would have nominated Mr. Seward and not Mr. Lincoln. Mr. Seward was the acknowledged leader of the new party; had been its most telling spokesman; had given its tenets definition and currency. Mr. Lincoln had not been brought within view of the country as a whole until the other day, when he had given Mr. Douglas so hard a fight to keep his seat in the Senate, and had but just now given currency among thoughtful men to the striking phrases of the searching speeches he had made in debate with his practiced antagonist. But the convention met in Illinois, amidst throngs of Mr. Lincoln's ardent friends and advocates. His managers saw to it that the galleries were properly filled with men who would cheer every mention of his name until the hall was shaken. Every influence of the place worked for him and he was chosen.

Thoughtful critics of our political practices have not allowed the excellence of the choice to blind them to the danger of the method. They have known too many examples of what the galleries have done to supplement the efforts of managing politicians to feel safe in the presence of processes which seem rather those of intrigue and impulse than those of sober choice. They can cite instances, moreover, of sudden, unlooked-for excitements on the floor of such bodies which have swept them from the control of all sober influences and hastened them to choices which no truly deliberative assembly could ever have made. There is no training school for Presidents, unless, as some governors have wished, it be looked for in the governorship

of states; and nominating conventions have confined themselves in their selections to no class, have demanded of aspirants no particular experience or knowledge of affairs. They have nominated lawyers without political experience, soldiers, editors of newspapers, newspaper correspondents, whom they pleased, without regard to their lack of contact with affairs. It would seem as if their choices were almost matters of chance.

In reality there is much more method, much more definite purpose, much more deliberate choice in the extraordinary process than there seems to be. The leading spirits of the national committee of each party could give an account of the matter which would put a very different face on it and make the methods of nominating conventions seem, for all the undoubted elements of chance there are in them, on the whole very manageable. Moreover, the party that expects to win may be counted on to make a much more conservative and thoughtful selection of a candidate than the party that merely hopes to win. The haphazard selections which seem to discredit the system are generally made by conventions of the party unaccustomed to success. Success brings sober calculation and a sense of responsibility.

And it must be remembered also that our political system is not so coördinated as to supply a training for presidential aspirants or even to make it absolutely necessary that they should have had extended experience in public affairs. Certainly the country has never thought of members of Congress as in any particular degree fitted for the presidency. Even the Vice-President is not afforded an opportunity to learn the duties of the office. The men best prepared, no doubt, are those who have been governors of states or members of cabinets. And yet even they are chosen for their respective offices generally by reason of

a kind of fitness and availability which does not necessarily argue in them the size and power that would fit them for the greater office. In our earlier practice cabinet officers were regarded as in the natural line of succession to the presidency. Mr. Jefferson had been in General Washington's cabinet, Mr. Madison in Mr. Jefferson's, Mr. Monroe in Mr. Madison's; and generally it was the Secretary of State who was taken. But those were days when English precedent was strong upon us, when cabinets were expected to be made up of the political leaders of the party in power; and from their ranks subsequent candidates for the presidency were most likely to be selected. The practice, as we look back to it, seems eminently sensible, and we wonder why it should have been so soon departed from and apparently forgotten. We wonder, too, why eminent senators have not sometimes been chosen; why members of the House have so seldom commanded the attention of nominating conventions; why public life has never offered itself in any definite way as a preparation for the presidential office.

If the matter be looked at a little more closely, it will be seen that the office of President, as we have used and developed it, really does not demand actual experience in affairs so much as particular qualities of mind and character which we are at least as likely to find outside the ranks of our public men as within them. What is it that a nominating convention wants in the man it is to present to the country for its suffrage? A man who will be and who will seem to the country in some sort an embodiment of the character and purpose it wishes its government to have,—a man who understands his own day and the needs of the country, and who has the personality and the initiative to enforce his views both upon the people and upon Congress. It may seem an odd way to get such a man.

It is even possible that nominating conventions and those who guide them do not realize entirely what it is that they do. But in simple fact the convention picks out a party leader from the body of the nation. Not that it expects its nominee to direct the interior government of the party and to supplant its already accredited and experienced spokesman in Congress and in its state and national committees; but it does of necessity expect him to represent it before public opinion and to stand before the country as its representative man, as a true type of what the country may expect of the party itself in purpose and principle. It cannot but be led by him in the campaign; if he be elected, it cannot but acquiesce in his leadership of the government itself. What the country will demand of the candidate will be, not that he be an astute politician, skilled and practiced in affairs, but that he be a man such as it can trust, in character, in intention, in knowledge of its needs, in perception of the best means by which those needs may be met, in capacity to prevail by reason of his own weight and integrity. Sometimes the country believes in a party, but more often it believes in a man; and conventions have often shown the instinct to perceive which it is that the country needs in a particular presidential year, a mere representative partisan, a military hero, or some one who will genuinely speak for the country itself, whatever be his training and antecedents. It is in this sense that the President has the rule of party leader thrust upon him by the very method by which he is chosen.

As legal executive, his constitutional aspect, the President cannot be thought of alone. He cannot execute laws. Their actual daily execution must be taken care of by the several executive departments and by the now innumerable body of federal officials throughout the country. In respect of the strictly executive duties of his office the

President may be said to administer the presidency in conjunction with the members of his cabinet, like the chairman of a commission. He is even of necessity much less active in the actual carrying out of the law than are his colleagues and advisers. It is therefore becoming more and more true, as the business of the government becomes more and more complex and extended, that the President is becoming more and more a political and less and less an executive officer. His executive powers are in commission, while his political powers more and more center and accumulate upon him and are in their very nature personal and inalienable.

Only the larger sort of executive questions are brought to him. Departments which run with easy routine and whose transactions bring few questions of general policy to the surface may proceed with their business for months and even years together without demanding his attention; and no department is in any sense under his direct charge. Cabinet meetings do not discuss detail: they are concerned only with the larger matters of policy or expedience which important business is constantly disclosing. There are no more hours in the President's day than in another man's. If he is indeed the executive, he must act almost entirely by delegation, and is in the hands of his colleagues. He is likely to be praised if things go well, and blamed if they go wrong; but his only real control is of the persons to whom he deputes the performance of executive duties. It is through no fault or neglect of his that the duties apparently assigned to him by the Constitution have come to be his less conspicuous, less important duties, and that duties apparently not assigned to him at all chiefly occupy his time and energy. The one set of duties it has proved practically impossible for him to perform; the other it has proved impossible for him to escape.

He cannot escape being the leader of his party except by incapacity and lack of personal force, because he is at once the choice of the party and of the nation. He is the party nominee, and the only party nominee for whom the whole nation votes. Members of the House and Senate are representatives of localities, are voted for only by sections of voters, or by local bodies of electors like the members of the state legislatures. There is no national party choice; and inasmuch as his strictly executive duties are in fact subordinated, so far at any rate as all detail is concerned, the President represents not so much the party's governing efficiency as to controlling ideals and principles. He is not so much part of its organization as its vital link of connection with the thinking nation. He can dominate his party by being spokesman for the real sentiment and purpose of the country, by giving direction to opinion, by giving the country at once the information and the statement of policy which will enable it to form its judgments alike of parties and of men.

For he is also the political leader of the nation, or has it in his choice to be. The nation as a whole has chosen him, and is conscious that it has no other political spokesman. His is the only national voice in affairs. Let him once win the admiration and confidence of the country, and no other single force can withstand him, no combinations of forces will easily overpower him. His position takes the imagination of the country. He is the representative of no constituency, but of the whole people. When he speaks in his true character, he speaks for no special interest. If he rightly interpret the national thought and boldly insist upon it, he is irresistible; and the country never feels the zest of action so much as when its President is of such insight and caliber. Its instinct is for unified action, and it craves a single leader. It is for

this reason that it will often prefer to choose a man rather than a party. A President whom it trusts can not only lead it, but form it to his own views.

It is the extraordinary isolation imposed upon our President by our system that makes the character and opportunity of his office so extraordinary. In him are centered both opinion and party. He may stand, if he will, a little outside party and insist as if it were upon the general opinion. It is with the instinctive feeling that it is upon occasion such a man that the country wants that nominating conventions will often nominate men who are not their acknowledged leaders, but only such men as the country would like to see lead both its parties. The President may also, if he will, stand within the party counsels and use the advantage of his power and personal force to control its actual programs. He may be both the leader of his party and the leader of the nation, or he may be one or the other. If he lead the nation, his party can hardly resist him. His office is anything he has the sagacity and force to make it.

That is the reason why it has been one thing at one time, another at another. The Presidents who have not made themselves leaders have lived no more truly on that account in the spirit of the Constitution than those whose force has told in the determination of law and policy. No doubt Andrew Jackson overstepped the bounds meant to be set to the authority of his office. It was certainly in direct contravention of the spirit of the Constitution that he should have refused to respect and execute decisions of the Supreme Court of the United States, and no serious student of our history can righteously condone what he did in such matters on the ground that his intentions were upright and his principles pure. But the Constitution of the United States is not a mere lawyer's document: it is

a vehicle of life, and its spirit is always the spirit of the age. Its prescriptions are clear and we know what they are; a written document makes lawyers of us all, and our duty as citizens should make us conscientious lawyers, reading the text of the Constitution without subtlety or sophistication; but life is always your last and most authoritative critic.

Some of our Presidents have deliberately held themselves off from using the full power they might legitimately have used, because of conscientious scruples, because they were more theorists than statesmen. They have held the strict literary theory of the Constitution, the Whig theory, the Newtonian theory, and have acted as if they thought that Pennsylvania Avenue should have been even longer than it is; that there should be no intimate communication of any kind between the Capitol and the White House; that the President as a man was no more at liberty to lead the houses of Congress by persuasion than he was at liberty as President to dominate them by authority,—supposing that he had, what he has not, authority enough to dominate them. But the makers of the Constitution were not enacting Whig theory, they were not making laws with the expectation that, not the laws themselves, but their opinions, known by future historians to lie back of them, should govern the constitutional action of the country. They were statesmen, not pedants, and their laws are sufficient to keep us to the paths they set us upon. The President is at liberty, both in law and conscience, to be as big a man as he can. His capacity will set the limit; and if Congress be overborne by him, it will be no fault of the makers of the Constitution,—it will be from no lack of constitutional powers on its part, but only because the President has the nation behind him, and

Congress has not. He has no means of compelling Congress except through public opinion.

That I say he has no means of compelling Congress will show what I mean, and that my meaning has no touch of radicalism or iconoclasm in it. There are illegitimate means by which the President may influence the action of Congress. He may bargain with the members, not only with regard to appointments, but also with regard to legislative measures. He may use his local patronage to assist members to get or retain their seats. He may interpose his powerful influence, in one covert way or another, in contests for places in the Senate. He may also overbear Congress by arbitrary acts which ignore the laws or virtually override them. He may even substitute his own orders for acts of Congress which he wants but cannot get. Such things are not only deeply immoral, they are destructive of the fundamental understandings of constitutional government and, therefore, of constitutional government itself. They are sure, moreover, in a country of free public opinion, to bring their own punishment, to destroy both the fame and the power of the man who dares to practice them. No honorable man includes such agencies in a sober exposition of the Constitution or allows himself to think of them when he speaks of the influences of "life" which govern each generation's use and interpretation of that great instrument, our sovereign guide and the object of our deepest reverence. Nothing in a system like ours can be constitutional which is immoral or which touches the good faith of those who have sworn to obey the fundamental law. The reprobation of all good men will always overwhelm such influences with shame and failure. But the personal force of the President is perfectly constitutional to any extent to which he chooses to exercise it, and it is by the clear logic of our constitutional practice that

he has become alike the leader of his party and the leader of the nation.

The political powers of the President are not quite so obvious in their scope and character when we consider his relations with Congress as when we consider his relations to his party and to the nation. They need, therefore, a somewhat more critical examination. Leadership in government naturally belongs to its executive officers, who are daily in contact with practical conditions and exigencies and whose reputations alike for good judgment and for fidelity are at stake much more than are those of the members of the legislative body at every turn of the law's application. The law-making part of the government ought certainly to be very hospitable to the suggestions of the planning and acting part of it. Those Presidents who have felt themselves bound to adhere to the strict literary theory of the Constitution have scrupulously refrained from attempting to determine either the subjects or the character of the legislation, except so far as they were obliged to decide for themselves, after Congress had acted, whether they should acquiesce in it or not. And yet the Constitution explicitly authorizes the President to recommend to Congress "such measures as he shall deem necessary and expedient," and it is not necessary to the integrity of even the literary theory of the Constitution to insist that such recommendations should be merely perfunctory. Certainly General Washington did not so regard them, and he stood much nearer the Whig theory than we do. A President's messages to Congress have no more weight or authority than their intrinsic reasonableness and importance give them: but that is their only constitutional limitation. The Constitution certainly does not forbid the President to back them up, as General Washington did, with such personal force and influence

as he may possess. Some of our Presidents have felt the need, which unquestionably exists in our system, for some spokesman of the nation as a whole, in matters of legislation no less than in other matters, and have tried to supply Congress with the leadership of suggestion, backed by argument and by iteration and by every legitimate appeal to public opinion. Cabinet officers are shut out from Congress; the President himself has, by custom, no access to its floor; many long established barriers of precedent, though not of law, hinder him from exercising any direct influence upon its deliberations; and yet he is undoubtedly the only spokesman of the whole people. They have again and again, as often as they were afforded the opportunity, manifested their satisfaction when he has boldly accepted the rule of leader, to which the peculiar origin and character of his authority entitle him. The Constitution bids him speak, and times of stress and change must more and more thrust upon him the attitude of originator of policies.

His is the vital place of action in the system, whether he accept it as such or not, and the office is the measure of the man,—of his wisdom as well as of his force. His veto abundantly equips him to stay the hand of Congress when he will. It is seldom possible to pass a measure over his veto, and no President has hesitated to use the veto when his own judgment of the public good was seriously at issue with that of the houses. The veto has never been suffered to fall into even temporary disuse with us. In England it has ceased to exist, with the change in the character of the executive. There has been no veto since Anne's day, because ever since the reign of Anne the laws of England have been originated either by ministers who spoke the king's own will or by ministers whom the king did not dare gainsay; and in our own time the ministers who

formulate the laws are themselves the executive of the nation; a veto would be a negative upon their own power. If bills pass of which they disapprove, they resign and give place to the leaders of those who approve them. The framers of the Constitution made in our President a more powerful, because a more isolated, king than the one they were imitating; and because the Constitution gave them their veto in such explicit terms, our Presidents have not hesitated to use it, even when it put their mere individual judgment against that of large majorities in both houses of Congress. And yet in the exercise of the power to suggest legislation, quite as explicitly conferred upon them by the Constitution, some of our Presidents have seemed to have a timid fear that they might offend some law of taste which had become a constitutional principle.

In one sense their messages to Congress have no more authority than the letters of any other citizen would have. Congress can heed or ignore them as it pleases; and there have been periods of our history when presidential messages were utterly without practical significance, perfunctory documents which few persons except the editors of newspapers took the trouble to read. But if the President has personal force and cares to exercise it, there is this tremendous difference between his messages and the views of any other citizen, either outside Congress or in it: that the whole country reads them and feels that the writer speaks with an authority and a responsibility which the people themselves have given him.

The history of our cabinets affords a striking illustration of the progress of the idea that the President is not merely the legal head but also the political leader of the nation. In the earlier days of the government it was customary for the President to fill his cabinet with the recognized leaders of his party. General Washington even tried

the experiment which William of Orange tried at the very beginning of the era of cabinet government. He called to his aid the leaders of both political parties, associating Mr. Hamilton with Mr. Jefferson, on the theory that all views must be heard and considered in the conduct of the Government. That was the day in which English precedent prevailed, and English cabinets were made up of the chief political characters of the day. But later years have witnessed a marked change in our practice, in this as in many other things. The old tradition was indeed slow in dying out. It persisted with considerable vitality at least until General Garfield's day, and may yet from time to time revive, for many functions of our cabinets justify it and make it desirable. But our later Presidents have apparently ceased to regard the cabinet as a council of party leaders such as the party they represent would have chosen. They look upon it rather as a body of personal advisers whom the President chooses from the ranks of those whom he personally trusts and prefers to look to for advice. Our recent Presidents have not sought their advisers among those whom the fortunes of party contest have brought into prominence and influence, but have called their personal friends and business colleagues to cabinet positions, and men who have given proof of their efficiency in private, not in public, life,—bankers who had never had any place in the formal counsels of the party, eminent lawyers who had held aloof from politics, private secretaries who had showed an unusual sagacity and proficiency in handling public business; as if the President were himself alone the leader of his party, the members of his cabinet only his private advisers, at any rate advisers of his private choice. Mr. Cleveland may be said to have been the first President to make this conception of the cabinet prominent in his choices, and he did not do so

until his second administration. Mr. Roosevelt has emphasized the idea.

Upon analysis it seems to mean this: the cabinet is an executive, not a political body. The President cannot himself be the actual executive; he must therefore find, to act in his stead, men of the best legal and business gifts, and depend upon them for the actual administration of the government in all its daily activities. If he seeks political advice of his executive colleagues, he seeks it because he relies upon their natural good sense and experienced judgment, upon their knowledge of the country and its business and social conditions, upon their sagacity as representative citizens of more than usual observation and discretion; not because they are supposed to have had any very intimate contact with politics or to have made a profession of public affairs. He has chosen, not representative politicians, but eminent representative citizens, selecting them rather for their special fitness for the great business posts to which he has assigned them than for their political experience, and looking to them for advice in the actual conduct of the government rather than in the shaping of political policy. They are, in his view, not necessarily political officers at all.

It may with a great deal of plausibility be argued that the Constitution looks upon the President himself in the same way. It does not seem to make him a prime minister or the leader of the nation's counsels. Some Presidents are, therefore, and some are not. It depends upon the man and his gifts. He may be like his cabinet, or he may be more than his cabinet. His office is a mere vantage ground from which he may be sure that effective words of advice and timely efforts at reform will gain telling momentum. He has the ear of the nation as of course, and a great person may use such an advantage greatly.

If he use the opportunity, he may take his cabinet into partnership or not, as he pleases; and so its character may vary with his. Self-reliant men will regard their cabinets as executive councils; men less self-reliant or more prudent will regard them as also political councils, and will wish to call into them men who have earned the confidence of their party. The character of the cabinet may be made a nice index of the theory of the presidential office, as well as of the President's theory of party government; but the one view is, so far as I can see, as constitutional as the other.

One of the greatest of the President's powers I have not yet spoken of at all: his control, which is very absolute, of the foreign relations of the nation. The initiative in foreign affairs, which the President possesses without any restriction whatever, is virtually the power to control them absolutely. The President cannot conclude a treaty with a foreign power without the consent of the Senate, but he may guide every step of diplomacy, and to guide diplomacy is to determine what treaties must be made, if the faith and prestige of the government are to be maintained. He need disclose no step of negotiation until it is complete, and when in any critical matter it is completed the government is virtually committed. Whatever its disinclination the Senate may feel itself committed also.

I have not dwelt upon this power of the President, because it has been decisively influential in determining the character and influence of the office at only two periods in our history; at the very first, when the government was young and had so to use its incipient force as to win the respect of the nations into whose family it had thrust itself and in our own day when the results of the Spanish War, the ownership of distant possessions, and many sharp struggles for foreign trade make it necessary that we

should turn our best talents to the task of dealing firmly, wisely, and justly with political and commercial rivals. The President can never again be the mere domestic figure he has been throughout so large a part of our history. The nation has risen to the first rank in power and resources. The other nations of the world look askance upon her, half in envy, half in fear, and wonder with a deep anxiety what she will do with her vast strength. They receive the frank professions of men like Mr. John Hay, whom we wholly trusted, with a grain of salt, and doubt what we were sure of, their truthfulness and sincerity, suspecting a hidden design under every utterance he makes. Our President must always, henceforth, be one of the great powers of the world, whether he act greatly and wisely or not, and the best statesmen we can produce will be needed to fill the office of Secretary of State. We have but begun to see the presidential office in this light; but it is the light which will more and more beat upon it, and more and more determine its character and its effect upon the politics of the nation. We can never hide our President again as a mere domestic officer. We can never again see him the mere executive he was in the thirties and forties. He must stand always at the front of our affairs, and the office will be as big and as influential as the man who occupies it.

How is it possible to sum up the duties and influence of such an office in such a system in comprehensive terms which will cover all its changeful aspects? In the view of the makers of the Constitution the President was to be the legal executive; perhaps the leader of the nation; certainly not the leader of the party, at any rate while in office. But by the operation of forces inherent in the very nature of government he has become all three, and by inevitable consequence the most heavily burdened officer in the

world. No other man's day is so full as his, so full of the responsibilities which tax mind and conscience alike and demand an inexhaustible vitality. The mere task of making appointments to office, which the Constitution imposes upon the President, has come near to breaking some of our Presidents down, because it is a never-ending task in a civil service not yet put upon a professional footing, confused with short terms of office, always forming and dissolving. And in proportion as the President ventures to use his opportunity to lead opinion and act as spokesman of the people in affairs the people stand ready to overwhelm him by running to him with every question, great and small. They are as eager to have him settle a literary question as a political; hear him as acquiescently with regard to matters of special expert knowledge as with regard to public affairs, and call upon him to quiet all troubles by his personal intervention. Men of ordinary physique and discretion cannot be President and live, if the strain be not somehow relieved. We shall be obliged always to be picking our chief magistrates from among wise and prudent athletes,—a small class.

The future development of the presidency, therefore, must certainly, one would confidently predict, run along such lines as the President's later relations with his cabinet suggest. General Washington, partly out of unaffected modesty, no doubt, but also out of the sure practical instinct which he possessed in so unusual a degree, set an example which few of his successors seem to have followed in any systematic manner. He made constant and intimate use of his colleagues in every matter that he handled, seeking their assistance and advice by letter when they were at a distance and he could not obtain it in person. It is well known to all close students of our history that his greater state papers, even those which

seem in some peculiar and intimate sense his personal utterances, are full of the ideas and the very phrases of the men about him whom he most trusted. His rough drafts came back to him from Mr. Hamilton and Mr. Madison in great part rephrased and rewritten, in many passages reconceived and given a new color. He thought and acted always by the light of counsel, with a will and definite choice of his own, but through the instrumentality of other minds as well as his own. The duties and responsibilities laid upon the President by the Constitution can be changed only by constitutional amendment,—a thing too difficult to attempt except upon some greater necessity then the relief of an overburdened office, even though that office be the greatest in the land; and it is to be doubted whether the deliberate opinion of the country would consent to make of the President a less powerful officer than he is. He can secure his own relief without shirking any real responsibility. Appointments, for example, he can, if he will, make more and more upon the advice and choice of his executive colleagues; every matter of detail not only, but also every minor matter of counsel or of general policy, he can more and more depend upon his chosen advisers to determine; he need reserve for himself only the larger matters of counsel and that general oversight of the business of the government and of the persons who conduct it which is not possible without intimate daily consultations, indeed, but which is possible without attempting the intolerable burden of direct control. This is, no doubt, the idea of their functions which most Presidents have entertained and which most Presidents suppose themselves to have acted on; but we have reason to believe that most of our Presidents have taken their duties too literally and have attempted the impossible. But we can safely predict that as the multi-

tude of the President's duties increases, as it must with the growth and widening activities of the nation itself, the incumbents of the great office will more and more come to feel that they are administering it in its truest purpose and with greatest effect by regarding themselves as less and less executive officers and more and more directors of affairs and leaders of the nation,—men of counsel and of the sort of action that makes for enlightenment.

CHAPTER VI

FOREIGN AFFAIRS

24. The Secretary of State[1]

In recent years foreign affairs have become increasingly important to the American people. In the American government foreign affairs are taken care of by the Secretary of State, and this brief selection written by Senator Henry Cabot Lodge, formerly Chairman of the Senate Committee on Foreign Relations, states admirably the qualifications which an ideal Secretary of State should possess.

The post is under any circumstances immensely difficult to fill and has, since Mr. Hay has been in office, become much more so owing to our extended foreign relations, the importance of which will continue to increase. A Secretary of State cannot be taken, as many Cabinet Officers can, from among the able men who have shown in business the qualities of strong administration. He must have had experience in public life, know public men and be able to deal with them. He must have a knowledge of foreign languages and be able to read one or more even if he cannot speak them. He must know Europe and understand world politics, the relations of nations and the balance of equilibrium of the powers. He ought to have the training of the great university and of books and literature. He must be a man of the world and of the society whose rules are common to western civilization. A man like Gresham, for example, able as he was, who lived at a

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hotel and knew nothing of the social exigencies was at a distinct disadvantage.

25. Washington's Farewell Address *

Washington's announcement of his proposed retirement from public life was given to the country through this address. It is a notable document which has had very great influence upon our people and upon our leaders. It is often quoted today—especially those parts of it which refer to foreign affairs—because it carries great authority. The phrase "entangling alliances" which is occasionally attributed to this address was not used by Washington, but rather appeared in Jefferson's first inaugural.

The period for a new election of a citizen to administer the Executive Government of the United States being not far distant, and the time actually arrived when your thoughts must be employed in designating the person who is to be clothed with that important trust, it appears to me proper, especially as it may conduce to a more distinct expression of the public voice, that I should now apprise you of the resolution I have formed to decline being considered among the number of those out of whom a choice is to be made.

I beg you at the same time to do me the justice to be assured that this resolution has not been taken without a strict regard to all the considerations appertaining to the relation which binds a dutiful citizen to his country; and that in withdrawing the tender of service, which silence in my situation might imply, I am influenced by no diminution of zeal for your future interest, no deficiency of grateful respect for your past kindness, but am supported by a full conviction that the step is compatible with both.

The acceptance of and continuance hitherto in the office to which your suffrages have twice called me have been a

uniform sacrifice of inclination to the opinion of duty and to a deference for what appeared to be your desire. I constantly hoped that it would have been much earlier in my power, consistently with motives which I was not at liberty to disregard, to return to that retirement from which I had been reluctantly drawn. The strength of my inclination to do this previous to the last election had even led to the preparation of an address to declare it to you; but mature reflection on the then perplexed and critical posture of our affairs with foreign nations and the unanimous advice of persons entitled to my confidence impelled me to abandon the idea. I rejoice that the state of your concerns, external as well as internal, no longer renders the pursuit of inclination incompatible with the sentiment of duty or propriety, and am persuaded whatever partiality may be retained for my services, that in the present circumstances of our country you will not disapprove my determination to retire.

To the efficacy and permanency of your union a government for the whole is indispensable. No alliances, however strict, between the parts can be an adequate substitute. They must inevitably experience the infractions and interruptions which all alliances in all times have experienced. Sensible of this momentous truth, you have improved upon your first essay by the adoption of a Constitution of Government better calculated than your former for an intimate union and for the efficacious management of your common concerns. This Government, the offspring of our own choice, uninfluenced and unawed adopted upon full investigation and mature deliberation, completely free in its principles, in the distribution of its powers, uniting security with energy, and containing within itself a provision for its own amendment, has a just claim to your confidence and your support. Respect

for its authority, compliance with its laws, acquiescence in its measures, are duties enjoined by the fundamental maxims of true liberty. The basis of our political systems is the right of the people to make and to alter their constitutions of government. But the constitution which at any time exists till changed by an explicit and authentic act of the whole people is sacredly obligatory upon all. The very idea of the power and the right of the people to establish government presupposes that duty of every individual to obey the established government.

All obstructions to the execution of the laws, all combinations and associations, under whatever plausible character, with the real design to direct, control, counteract, or awe the regular deliberation and action of the constituted authorities, are destructive of this fundamental principle and of fatal tendency. They serve to organize faction; to give it an artificial and extraordinary force; to put in the place of the delegated will of the nation the will of a party, often a small but artful and enterprising minority of the community, and, according to the alternate triumphs of different parties, to make the public administration the mirror of the ill-concerted and incongruous projects of faction rather than the organ of consistent and wholesome plans, digested by common counsels and modified by mutual interests.

However combinations or associations of the above description may now and then answer popular ends, they are likely in the course of time and things to become potent engines by which cunning, ambitious, and unprincipled men will be enabled to subvert the power of the people, and to usurp for themselves the reins of government, destroying afterwards the very engines which have lifted them to unjust dominion.

Toward the preservation of your Government and the

permanency of your present happy state, it is requisite not only that you steadily discountenance irregular oppositions to its acknowledged authority, but also that you resist with care the spirit of innovation upon its principles, however specious the pretexts. One method of assault may be to effect in the forms of the Constitution alterations which will impair the energy of the system, and thus to undermine what can not be directly overthrown. In all the changes to which you may be invited remember that time and habit are at least as necessary to fix the true character of governments as of the other human institutions; that experience is the surest standard by which to test the real tendency of the existing constitution of a country; that facility in changes upon the credit of mere hypothesis and opinion exposes to perpetual change, from the endless variety of hypothesis and opinion; and remember especially that for the efficient management of your common interests in a country so extensive as ours a government of as much vigor as is consistent with the perfect security of liberty is indispensable. Liberty itself will find in such a government, with powers properly distributed and adjusted, its surest guardian. It is, indeed, little else than a name where the government is too feeble to withstand the enterprises of faction, to confine each member of the society within the limits prescribed by the laws, and to maintain all in the secure and tranquil enjoyment of the rights of person and property.

It is important, likewise, that the habits of thinking in a free country should inspire caution in those intrusted with its administration to confine themselves within their respective constitutional spheres, avoiding in the exercise of the powers of one department to encroach upon another. The spirit of encroachment tends to consolidate the powers of all the departments in one, and thus to create,

whatever the form of government, a real despotism. A just estimate of that love of power and proneness to abuse it which predominates in the human heart is sufficient to satisfy us of the truth of this position. The necessity of reciprocal checks in the exercise of political power, by dividing and distributing it into different depositories, and constituting each the guardian of the public weal against invasions by the others, has been evinced by experiments ancient and modern, some of them in our country and under our own eyes. To preserve them must be as necessary as to institute them. If in the opinion of the people the distribution or modification of the constitutional powers be in any particular wrong, let it be corrected by an amendment in the way which the Constitution designates. But let there be no change by usurpation; for though this in one instance may be the instrument of good, it is the customary weapon by which free governments are destroyed. The precedent must always greatly overbalance in permanent evil any partial or transient benefit which the use can at any time yield.

Of all the dispositions and habits which lead to political prosperity, religion and morality are indispensable supports. In vain would that man claim the tribute of patriotism who should labor to subvert these great pillars of human happiness—these firmest props of the duties of men and citizens. The mere politician, equally with the pious man, ought to respect and to cherish them. A volume could not trace all their connections with private and public felicity. Let it simply be asked, Where is the security for property, for reputation, for life, if the sense of religious obligation *desert* the oaths which are the instruments of investigation in courts of justice? And let us with caution indulge the supposition that morality can be maintained without religion. Whatever may be con-

ceded to the influence of refined education on minds of peculiar structure, reason and experience both forbid us to expect that national morality can prevail in exclusion of religious principle.

It is substantially true that virtue or morality is a necessary spring of popular government. The rule indeed extends with more or less force to every species of free government. Who that is a sincere friend to it can look with indifference upon attempts to shake the foundation of the fabric? Promote, then, as an object of primary importance, institutions for the general diffusion of knowledge. In proportion as the structure of a government gives force to public opinion, it is essential that public opinion should be enlightened.

As a very important source of strength and security, cherish public credit. One method of preserving it is to use it as sparingly as possible, avoiding occasions of expense by cultivating peace, but remembering also that timely disbursements to prepare for danger frequently prevent much greater disbursements to repel it; avoiding likewise the accumulation of debt, not only by shunning occasions of expense, but by vigorous exertions in time of peace to discharge the debts which unavoidable wars have occasioned, not ungenerously throwing upon posterity the burthen which we ourselves ought to bear. The execution of these maxims belongs to your representatives; but it is necessary that public opinion should coöperate. To facilitate to them the performance of their duty it is essential that you should practically bear in mind that toward the payment of debts there must be revenue; that to have revenue there must be taxes; that no taxes can be devised which are not more or less inconvenient and unpleasant; that the intrinsic embarrassment inseparable from the selection of the proper objects (which is always a choice

of difficulties), ought to be a decisive motive for a candid construction of the conduct of the Government in making it, and for a spirit of acquiesence in the measures for obtaining revenue which the public exigencies may at any time dictate.

Observe good faith and justice toward all nations. Cultivate peace and harmony with all. Religion and morality enjoin this conduct. And can it be that good policy does not equally enjoin it? It will be worthy of a free, enlightened, and at no distant period a great nation to give to mankind the magnanimous and too novel example of a people always guided by an exalted justice and benevolence. Who can doubt that in the course of time and things the fruits of such a plan would richly repay any temporary advantages which might be lost by a steady adherence to it? Can it be that Providence has not connected the permanent felicity of a nation with its virtue? The experiment, at least, is recommended by every sentiment which ennobles human nature. Alas! is it rendered impossible by its vices?

In the execution of such a plan nothing is more essential than that permanent, inveterate antipathies against particular nations and passionate attachments for others should be excluded, and that in place of them just and amicable feelings toward all should be cultivated. The nation which indulges toward another an habitual hatred or an habitual fondness is in some degree a slave. It is a slave to its animosity or to its affection, either of which is sufficient to lead it astray from its duty and its interest. Antipathy in one nation against another disposes each more readily to offer insult and injury, to lay hold of slight causes of umbrage, and to be haughty and intractable when accidental or trifling occasions of dispute occur.

Hence frequent collisions, obstinate, envenomed, and

bloody contests. The nation prompted by ill will and resentment sometimes impels to war the government contrary to the best calculations of policy. The government sometimes participates in the national propensity, and adopts through passion what reason would reject. At other times it makes the animosity of the nation subservient to projects of hostility, instigated by pride, ambition, and other sinister and pernicious motives. The peace often, sometimes perhaps the liberty, of nations has been the victim.

So, likewise, a passionate attachment of one nation for another produces a variety of evils. Sympathy for the favorite nation, facilitating the illusion of an imaginary common interest in cases where no real common interest exists, and infusing into one the enmities of the other, betrays the former into a participation in the quarrels and wars of the latter without adequate inducement or justification. It leads also to concessions to the favorite nation of privileges denied to others, which is apt doubly to injure the nation making the concessions by unnecessarily parting with what ought to have been retained, and by exciting jealousy, ill will, and a disposition to retaliate in the parties from whom equal privileges are withheld; and it gives to ambitious, corrupted, or deluded citizens (who devote themselves to the favorite nation) facility to betray or sacrifice the interests of their own country without odium, sometimes even with popularity, gilding with the appearances of a virtuous sense of obligation, a commendable deference for public opinion, or a laudable zeal for public good the base or foolish compliances of ambition, corruption, or infatuation.

As avenues to foreign influence in innumerable ways, such attachments are particularly alarming to the truly enlightened and independent patriot. How many oppor-

tunities do they afford to tamper with domestic factions, to practice the arts of seduction, to mislead public opinion, to influence or awe the public councils! Such an attachment of a small or weak toward a great and powerful nation dooms the former to be the satellite of the latter. Against the insidious wiles of foreign influence (I conjure you to believe me, fellow-citizens) the jealousy of a free people ought to be *constantly* awake, since history and experience prove that foreign influence is one of the most baneful foes of republican government. But that jealousy, to be useful, must be impartial, else it becomes the instrument of the very influence to be avoided, instead of a defense against it. Excessive partiality for one foreign nation and excessive dislike of another cause those whom they actuate to see danger only on one side, and serve to veil and even second the arts of influence on the other. Real patriots who may resist the intrigues of the favorite are liable to become suspected and odious, while its tools and dupes usurp the applause and confidence of the people to surrender their interests.

The great rule of conduct for us in regard to foreign nations is, in extending our commercial relations to have with them as little *political* connection as possible. So far as we have already formed engagements let them be fufilled with perfect good faith. Here let us stop.

Europe has a set of primary interests which to us have none or a very remote relation. Hence she must be engaged in frequent controversies, the causes of which are essentially foreign to our concerns. Hence, therefore, it must be unwise in us to implicate ourselves by artificial ties in the ordinary vicissitudes of her politics or the ordinary combinations and collisions of her friendships or enmities.

Our detached and distant situation invites and enables

us to pursue a different course. If we remain one people, under an efficient government, the period is not far off when we may defy material injury from external annoyance; when we may take such an attitude as will cause the neutrality we may at any time resolve upon to be scrupulously respected; when belligerent nations, under the impossibility of making acquisitions upon us, will not lightly hazard the giving us provocation; when we may choose peace or war, as our interest, guided by justice, shall counsel.

Why forego the advantages of so peculiar a situation? Why quit our own to stand upon foreign ground? Why, by interweaving our destiny with that of any part of Europe, entangle our peace and prosperity in the toils of European ambition, rivalship, interest, humor, or caprice?

It is our true policy to steer clear of permanent alliances with any portion of the foreign world, so far, I mean, as we are now at liberty to do it; for let me not be understood as capable of patronizing infidelity to existing engagements. I hold the maxim no less applicable to public than to private affairs that honesty is always the best policy. I repeat, therefore, let those engagements be observed in their genuine sense. But in my opinion it is unnecessary and would be unwise to extend them.

Taking care always to keep ourselves by suitable establishments on a respectable defensive posture, we may safely trust to temporary alliances for extraordinary emergencies.

Harmony, liberal intercourse with all nations are recommended by policy, humanity, and interest. But even our commercial policy should hold an equal and impartial hand, neither seeking nor granting exclusive favors or preferences; consulting the natural course of things; diffusing and diversifying by gentle means the streams of

commerce, but forcing nothing; establishing with powers so disposed, in order to give trade a stable course, to define the rights of our merchants, and to enable the Government to support them, conventional rules of intercourse, the best that present circumstances and mutual opinion will permit, but temporary and liable to be from time to time abandoned or varied as experience and circumstances shall dictate; constantly keeping in view that it is folly in one nation to look for disinterested favors from another; that it must pay with a portion of its independence for whatever it may accept under that character; that by such acceptance it may place itself in the condition of having given equivalents for nominal favors, and yet of being reproached with ingratitude for not giving more. There can be no greater error than to expect or calculate upon real favors from nation to nation. It is an illusion which experience must cure, which a just pride ought to discard.

The duty of holding a neutral conduct may be inferred, without anything more, from the obligation which justice and humanity impose on every nation, in cases in which it is free to act, to maintain inviolate the relations of peace and amity toward other nations.

The inducements of interest for observing that conduct will best be referred to your own reflections and experience. With me a predominant motive has been to endeavor to gain time to our country to settle and mature its yet recent institutions, and to progress without interruption to that degree of strength and consistency which is necessary to give it, humanly speaking, the command of its own fortunes.

26. The Monroe Doctrine *

This doctrine is found in two widely separated paragraphs of President Monroe's Message to Congress of December 2, 1823. No public policy of the United States is as widely quoted or as generally accepted as the Monroe Doctrine. It is an article of faith which commands the support of the American people. Although its interpretation has varied with changing conditions, it remains today a foundation principle of American foreign policy.

A precise knowledge of our relations with foreign powers as respects our negotiations and transactions with each is thought to be particularly necessary. Equally necessary is it that we should form a just estimate of our resources, revenue, and progress in every kind of improvement connected with the national prosperity and public defense. It is by rendering justice to other nations that we may expect it from them. It is by our ability to resent injuries and redress wrongs that we may avoid them.

At the proposal of the Russian Imperial Government, made through the minister of the Emperor residing here, a full power and instructions have been transmitted to the minister of the United States at St. Petersburg to arrange to amicable negotiation the respective rights and interests of the two nations on the northwest coast of this continent. A similar proposal had been made by His Imperial Majesty to the Government of Great Britain, which has likewise been acceded to. The Government of the United States has been desirous of this friendly proceeding of manifesting the great value which they have invariably attached to the friendship of the Emperor and their solicitude to cultivate the best understanding with his Government. In the discussions to which this interest has given rise and in the arrangements by which they may

terminate the occasion has been judged proper for asserting, as a principle in which the rights and interests of the United States are involved, that the American continents, by the free and independent condition which they have assumed and maintained, are henceforth not to be considered as subjects for future colonization by any European powers.

It was stated at the commencement of the last session that a great effort was then making in Spain and Portugal to improve the condition of the people of those countries, and that it appeared to be conducted with extraordinary moderation. It need scarcely be remarked that the result has been so far very different from what was then anticipated. Of events in that quarter of the globe, with which we have so much intercourse and from which we derive our origin, we have always been anxious and interested spectators. The citizens of the United States cherish sentiments the most friendly in favor of the liberty and happiness of their fellow-men on that side of the Atlantic. In the wars of the European powers in matters relating to themselves we have never taken any part, nor does it comport with our policy so to do. It is only when our rights are invaded or seriously menaced that we resent injuries or make preparation for our defense. With the movements in this hemisphere we are of necessity more immediately connected, and by causes which must be obvious to all enlightened and impartial observers. The political system of the allied powers is essentially different in this respect from that of America. This difference proceeds from that which exists in their respective Governments; and to the defense of our own, which has been achieved by the loss of so much blood and treasure, and matured by the wisdom of their most enlightened citizens, and under which we have enjoyed unexampled felicity, this

whole nation is devoted. We owe it, therefore, to candor and to the amicable relations existing between the United States and those powers to declare that we should consider any attempt on their part to extend their system to any portion of this hemisphere as dangerous to our peace and safety. With the existing colonies or dependencies of any European power we have not interfered and shall not interfere. But with the Governments who have declared their independence and maintained it, and whose independence we have, on great consideration and on just principles, acknowledged, we could not view any interposition for the purpose of oppressing them, or controlling in any other manner their destiny, by any European power in any other light than as the manifestation of an unfriendly disposition toward the United States. In the war between those new Governments and Spain we declared our neutrality at the time of their recognition, and to this we have adhered, and shall continue to adhere, provided no change shall occur which, in the judgment of the competent authorities of the Government, shall make a corresponding change on the part of the United States indispensable to their security.

CHAPTER VII

NATIONAL ADMINISTRATION

27. Adminstrative Reorganization * [1]

The reorganization of the administrative branch of the federal government is one of the greatest public needs of today. Mr. Herbert Hoover, Secretary of Commerce in the Cabinets of Presidents Harding and Coolidge, has been one of the most insistent advocates of this reform and in the following paper he explains the present inefficient organization of governmental activities. Despite the valuable work and recommendations of the Joint Congressional Committee on Reorganization, and despite the urgings of two Presidents, Congress has not yet taken appropriate action.

There is one problem of the new administration that has received the attention and thought of the organized engineers of America for many years past. This is the problem of the reorganization of the federal government. The inadequacy, the wastefulness, and the inefficiency of our federal organization was evident enough under pre-war conditions. These inadequacies, these inefficiencies, these wastes were exhibited to the country during the war at the cost of millions.

Congress has placed the problem in the hands of a very able Congressional Joint Committee. But if this committee succeeds in securing the eminently necessary results it will only be by full insistent support of it by public opinion. Many attempts have been made at reorganiza-

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tion before but all of them have gone to the same crematory—the interminable differences in opinion among the executive and legislative officials over details.

To any student of federal organization, one sweeping and fundamental necessity stands out above all others, and that is that the administrative units of the government must be regrouped so as to give each of the great departments more nearly a single purpose. The hodgepodge of aims in certain administrative branches is scarcely believable when we consider our national pride and skill in organization. Such functions as public domain, public works, assistance to veterans, public health functions, aids to navigation, to industry, to trade, purchasing of major supplies, are each and every one scattered over from four to eight departments, most of which are devoted to some other major purpose.

Economies can be accomplished from a public point of view by an elimination of the overlap in these different units of administration through unification into groups of similar purpose. The real economy to the nation, however, does not lie here, however great this may be, but it lies in their more effective functioning in their daily relation to the public. The extra cost imposed upon business in general in the determination of the relation of any particular business to the different functions of the government, with the unnecessarily duplicating interferences and demands, is a real charge on national wealth, probably as great in some directions as the actual costs of the administrations themselves.

Of equal importance with economy is to secure effective concentration of government effort into service to the community. No constructive vision or policies can be built around a national service directed by from two to ten cabinet members, more especially when this particular

purpose is a side issue to all of them. No better example of this exists than the deplorable handling of our relations to our veterans.

There are other reasons that render reorganization imperative. The changed economic situation of the world demands that the functions of the government in aid to commerce and industry be given more concentration and wider scope.

The enlarged activities of the government as a result of the war greatly affect certain departments. I believe it is the consensus of opinion of the gentlemen conducting these departments that in the interests of efficiency they should not be called to responsibility for the administration of at least some of the matters not pertinent to their major functions which clutter their departments.

We have also some confusion between executive, advisory, and semi-judicial functions. One of the tendencies of government both local and national during the last twenty years has been to add executive functions to commissions and boards created primarily for advisory or regulatory purposes. It requires no argument with our business public that the executive functions can not rise to high efficiency in the hands of government boards where from the very nature of things each member has a separate responsibility to the public and is primarily engaged in a semi-judicial function.

Furthermore, during the last few years there has been a great growth of independent agencies in the government reporting directly to the President until his office is overburdened almost beyond the point of endurance. The original and sound conception was that the executive functions should be reported up to the President directly through his cabinet officials. Not only do these outside functions today overburden the President, but they render

coördination with executive departments extremely difficult. It is neither possible nor advisable to place all these outside organizations into the departments, but much could be done to mitigate the situation.

I have daily evidence in the department of Commerce of all these forces. The question of governmental aids to navigation is not by any means one of the principal functions of our government, but it must be a sore trial to the hardy mariner. He must obtain his domestic charts from the department of Commerce, his foreign charts from the Navy department, and his nautical almanac from the Naval Observatory—and he will in some circumstances get sailing directions from the Army. In a fog he may get radio signals from both the Navy and Commerce, and listen to fog horns and look for lights and buoys provided him by Commerce; if he sinks his life is saved by the Treasury. He will anchor at the direction of the Army, who rely upon the Treasury to enforce their will. His boilers and lifeboats are inspected by the department of Commerce; his crew is certified by one bureau in Commerce, signed off in the presence of another, and inspected at sailing by the Treasury, and on arrival by the department of Labor.

It is possible to relate the same sort of story in our governmental relations to industry to our domestic and foreign commerce.

The moral of all this is that economy could be made by placing more of these functions under one head, not only economy to the government but to the mariner. Congress would know what it spends in aid to navigation and the government could develop definite policies in giving proper assistance and lastly could remove from the hardy mariner's mind his well founded contempt for the government as a business organization.

The economic changes in the world, growing out of the war, and their reflex upon our trade and industry make it vital if we are to maintain our standards of living against increasing ferocity of competition that we shall concentrate and enlarge our national effort in the aid, protection, stimulation and perfection of our industrial and commercial life. There can be no real department of Commerce or commercial policies to these broad purposes so long as the instrumentalities of the government bearing on these questions lie in half a dozen departments.

We want no paternalism in government. We do need in government aids to business in a collective sense. In a department we do not want to either engage in business or to regulate business. We need a department that can give prompt and accurate diagnosis from both a foreign and domestic point of view of economic events, of economic tendencies; of economic ills; that can promptly and accurately survey economic opportunity, economic discrimination and opposition; that can give scientific advice and assistance and stability to industry in furnishing it with prompt and accurate data upon production, supplies and consumption; that can coöperate with it in finding standards and simplifications; that can by broad study promote national conservation in industry and the elimination of waste; that can study and ventilate the commercial side of our power possibilities; that can study and advise national policies in development of rail, water, and overseas transportaton; that, in fact covers, so far as government functions can cover, the broad commercial problems of trade, industry, and transportation. This can be accomplished more by coördination of existing governmental facilities than by increased expenditures.

28. Party and Patronage *

The Civil Service Reform League has been one of the moving forces in this country for the elimination of spoils politics. The founder of this organization and its first President was George William Curtis, who has been described as "the intellectual head, the guiding force and the constant moral inspiration of the civil service reform movement." Even today it is almost impossible to speak on the subject without repeating him. His annual addresses to the association for a period of about ten years are the greatest collection of facts and arguments on civil service reform obtainable. The address given here was delivered at the annual meeting in 1892 just before his death.

If Charles Lamb had been an American by birth, as he is certainly an American by affectionate literary adoption, he would have added probably to his list of Popular Fallacies the pleasing delusion that a republic is a self-adjusting system of liberty and equal rights, and that to upset a throne is to set up justice. When Voltaire was insulted by the London mob for being a Frenchman, an offense which John Bright said is forgiven by John Bull only with the greatest reluctance, the Frenchman turned upon the steps as he entered his door, and, with exquisite sarcasm, appealed to the nobleness of the English character, and complimented the mob upon their institutions and love of liberty. Voltaire knew that in England the surest appeal was to the national self-complacency, a virtue which is not wanting to the English-speaking race wherever it is found.

But although we may justly claim that a republic, upon the whole, secures fairer play for every man than any other government, it is not necessary, as in a disputed election, to claim everything. However it may be in Maryland, in New York the establishment of a republic by our

fathers, while it has secured a fairer general chance for all men, has not yet developed universal political virtue or absolutely honest government. Like all excellent human devices, the administration of government must be constantly and carefully repaired and improved. If a locomotive upon a railroad must be watched with incessant care and be scrupulously oiled and burnished, in order effectively to do its work; if even a chronometer must be regularly wound, if it is to report accurately the time of day; if a slight derangement of the machinery brings the huge, humming factory to silence, it is a fond delusion that popular forms of government alone will secure honest and equitable administration.

Mont Blanc, the sovereign Alp, has not a charm to stay the morning star, and the American republic, greatest and best of all republics, has no more power than the Roman republic by its name alone to secure freedom and wise progress. It is but an instrument, and its beneficent efficiency depends upon the intelligence, character and conscience of the people who wield it, and upon promptitude and skill with which it is kept in repair and adjusted to the changing conditions of its operation. The demand of reform in methods of administration of government, therefore, is not revolutionary, nor Quixotic, nor surprising. It is the sign of a healthy and progressive political life. It is not exceptional, but, on the contrary, it is familiar in every kind of human activity. It is the impulse of the instinct which constantly seeks something better,

> "The desire of the moth for the star
> Of the night for the morrow;"

the instinct which stimulates medical science to the discovery of more certain relief for the physical pain and

suffering of mankind, which produces endless mechanical inventions, increases the knowledge of occult forces and their practical application to human convenience, arrests the vast and needless waste of vitality that lesser knowledge cannot stay; which lightens labor and lengthens life by greater command of time and space.

Why should this beneficent inspiration be lost to the sphere of politics which is not a less universal concern than all these? When human ingenuity is busily improving sewing machines and typewriters, steam engines, telephones and electric lights, and every mechanical and industrial process, why should methods of administration and government not be supposed susceptible of improvement? As the Arabian Nights and the old fairy stories are but delightful prophecies of our modern world of larger intelligence and shrewder wit, where we are wafted from place to place upon an enchanted carpet and in a chair of magic, where Ispahan converses with Istamboul, and a drop of elixir deadens pain, so Plato's republic, and Sir Thomas More's Utopia, and Harrington's Oceana, and all the ideal commonwealths of the poets and philosophers are but vague forecasts of states not further from ours than ours from those of early history.

Yet the world is not a garden of the Hesperides where we have only to raise our hands and pluck the golden fruit of progress. Progress, on the contrary, is everywhere the Golden Fleece to be won only by hard contention, by taming fire-breathing bulls of stupidity, by slaying dragons of malignity, and by victoriously withstanding hosts of slanderers and liars sprung from the teeth of venomous serpents. If the application of the humane discoveries of science and the advance of the comfort and convenience of modern civilization have been resisted as stoutly as if they were a pestilence or a consuming cloud

of locusts, it is not surprising that every political reform is ridiculed as visionary and denounced as incendiary. This has been so universally the welcome of improvement in every department of human interest that it may be said almost that presumption is in favor of every proposed reform, and that reputed quacks and tiresome fanatics are probably new Columbuses and Galileos and Jenners, the latest benefactors of mankind. It is this jealous distrust of progress which led so sagacious a statesman as Lord Shelburne to say: "The moment the independence of America is agreed to by our government the sun of Great Britain is set, and we shall no longer be a powerful or respectable people," and even Richard Henry Lee called the framers of the Constitution "visionary young men." These gentlemen were very positive, but it was only their rhetorical way of saying "here is a change," and change to certain conservative temperaments means only mischief. But the challenge of conservatism to the spirit of progress has this advantage, that it compels every change to prove its right by showing its reason.

The uncertain fortune of reform in politics, fluctuating between sudden success and long delay, is well explained by a remark of Fisher Ames that "the only constant agents in political affairs are the passions of men;" and by what Gardiner, the latest and masterly historian of the great civil war in England, says of the Presbyterianism of Prynne, that it enlisted on the side of the average intellect of the day, "which looked with suspicion on ideas not yet stamped with the mint mark of custom, the feeling which unconsciously exists in the majority of mankind of repugnance against all who aim at higher thinking or purer living than are deemed sufficient by their contemporaries, and who usually, in the opinion of their contemporaries, contrive to miss their aim." But existing order consists

always of ideas which are stamped with the mint mark of custom, and the hope of progress, therefore, lies in the ideas which are not yet authenticated at the mint. The Bourbon despotism in France, the Stuart abuses in England, the supremacy of the Crown in Colonial America, had the mint mark of custom. Had no other coinage been demanded these coined abuses would have remained the sole currency. Political progress, and with larger liberty and higher general welfare, is secured only by bringing fresh bullion to be stamped with the mint mark. In the ever-spreading tree of political life it is distrust of the established order, not acquiescence in it, which is the irritation of the stem that shows the spot where the new growth will spring.

A party or a majority needs watching as much as a king. Indeed, that such distrust is the safeguard of Democracy against Despotism is a truth as old as Demosthenes. Like a sleuth-hound distrust must follow executive power however it may double and whatever form it may assume. It is as much the safeguard of popular right against the will of a party as against the prerogative of a king. Distrust is, in fact, the instinct of enlightened political sagacity which sees that the peril of popular institutions lies in the abuse of the forms of popular government. The great commonplace of our political speech, eternal vigilance is the price of liberty, is fundamentally true. It is a scripture essential to political salvation. The demand for civil service reform is the cry of that eternal vigilance for still further restriction by the people of the delegated executive power.

Civil Service Reform, therefore, is but another successive step in the development of liberty under law. It is not eccentric nor revolutionary. It is a logical measure of political progress, in the light of larger experience

and adjusted to the exigencies of a republic in the nineteenth century instead of a monarchy in the thirteenth and seventeenth centuries, in the spirit of the wise jealousy of the constitution, in the interest of free institutions and of honest power as exercised by party.

The superstition of divine right has passed from a king to a party, and the old fiction of the law in monarchy that the king can do no wrong has become the practical faith of great multitudes in this republic in regard to party. Armed with the arbitrary power of patronage party overbears the free expression of the popular will and entrenches itself in illicit power. It makes the whole civil service a drilled and disciplined army whose living depends upon carrying elections at any cost for the party which controls it. Patronage has but to capture the local primary meeting and it commands the whole party organization. Every member of the party must submit or renounce his party allegiance, and with it the gratification of his political ambition, and such is the malign force of party spirit that in what seems to him a desperate alternative he often supports men whom he distrusts and methods which he despises lest his party should be defeated. He takes practically the position that party loyalty requires him to support one party with bad measures and unfit candidates rather than risk the success of another party with good measures and suitable men.

If I am telling the truth, it is plain that when the control of patronage passed from royal prerogative to popular party, the spirit and purpose of its exercise did not substantially change. A hundred years ago in England the king bought votes in Parliament; today in America party buys votes at the polls. The party system has subjected the citizen to the machine, and its first great resource is the bribery fund of patronage. It is by the skillful annual

expenditure of sixty millions of public money in the national arena, and by that of thirty millions in the municipal contests of New York alone, not by educational arguments and appeals to reason, that the machine or the managers of parties attempt to secure or maintain their ascendancy. Tammany Hall defends itself as Hume defended the king. The plea of both is the same. The king must maintain the crown against the parliament, and he can do it only by corruption, said Hume. Party is necessary, says Tammany, but party organization can be made effective only by workers. Workers must be paid, and the patronage of the government, that is to say the emolument of place, is the natural fund for such payment. This is the simple plea of the spoils system. It places every party on a wholly venal basis. Under its control party is no longer a combination of citizens for public ends; it is a trading company seeking the advantage of the leading partners. It is the selfishness of the individual, not the public spirit of the citizen, upon which it rests. And this view has various consequences.

If public money may be properly given as a private reward, the givers may decide upon what terms it shall be given. This is frankly asserted by Tammany, and in this it speaks for every party machine. It asks plainly, why should not a judge who is elected by us for a term of years, with a salary of fifteen thousand dollars a year, and who except for us could not be elected, pay to Tammany the very moderate commission of ten thousand dollars for his election, which Tammany guarantees? This is the doctrine of political assessments in the Custom House and Post Office and every branch of the service. It is rent paid for the place. It is tribute to the party for the personal favor of appointment. "Why should not a man pay for benefits? Why should not those who are

elected to well-salaried offices," asks Tammany, "pay the expenses of the election? Who are so interested in the election as its beneficiaries?" it inquires, and it asks candidly, because the truth that the people ordain elections for their own benefit and not for the private advantage of the candidates, Tammany not only does not believe, but when stated does not comprehend. And this view of Tammany is the view not only of each party machine, but a large majority of both parties. Tammany is called a gang of public robbers without political principles, an obscene fungus fattening upon the political corruption engendered by a great city. But it is the natural spawn of the spoils system. It is the mirror in which party as now organized among us is reflected, and when party contemplates the image of that diamonded savage with his scalping knife of spoils it may well recall the title of Rossetti's picture, "How they met themselves."

This sophistry of the spoils system extends itself readily beyond elections and appointments and assessments in the Civil Service, not only into the whole political system, but into every department of the national life. It is undoubtedly true that, whether there were a spoils system or not, great interests of all kinds, in the pursuit of their own advantage, would always attempt to bribe legislatures, and that public officers and voters would still be bought at the polls. But it is not true that such attempts would be made or would succeed under all circumstances. Cholera and typhus may not be wholly prevented by the wisest sanitary care. But cleanly, well drained, and prudent neighborhoods are much less exposed to their ravages than those which are abandoned to foulness of every kind and degree. The spoils system is a moral pestilence, bred of ignorance, carelessness and knavery, which invites corruption as filth invites disease. A community which holds

that a public office is a private benefit for which the recipient ought to pay, or that citizens of all parties in a free government may be justly taxed for the workers of a party, would hardly frown upon the proposition that the beneficiary of a law may properly pay for its passage. I do not say that the cases are exactly parallel, but the moral laxity and blindness in the one case would extend naturally and readily to the other. So long as it is held that the public money may be spent by a party for its own benefit, which means that in a country where party dominance should depend upon honest preference of its policy, the dominant party may properly pay sixty millions of dollars from the public treasury for votes, so long it will be as impossible to stem the corruption which threatens us on every side as to stay the resistless plunge of Niagara.

We are approaching the third Presidential election since the League was organized. Does any intelligent observer doubt that the party of administration controlling the vast salary fund of the Civil Service, which is practically a corruption fund, enters upon the campaign with an immense but wholly illicit advantage? Like every administration party, it is justly entitled to every advantage that arises from a wise policy, from the honest and efficient conduct of affairs, from strict adhesion—if it has adhered —to the promises by which it solicited public support, and from the faithful fulfillment—if it has fulfilled them —of voluntary executive pledges. To all these legitimate advantages the party is entitled. But so far as its administration has expended sixty millions of dollars in salaries with a view of the next election and to the continuance of the party in power, so far it has betrayed the principle of popular government, because so far it has deliberately bought party support from public money. The disposition of that fund was committed to it in trust for the public

welfare, and every cent of it which this administration has spent to advance a party interest has been spent in betrayal of a public trust. If the national patronage fund were six hundred millions of dollars instead of sixty, it is not impossible that, in the present development of the party system, the party of this administration, as of any other, by the shrewd expenditure of that sum might maintain itself in power. But the offense is not measured by figures. The abuse of a trust of sixty millions is morally as great as abuse of a trust ten times as large.

It is not an abuse peculiar to this administration. There has been no administration since that of John Quincy Adams which has not done the same thing. It was long done amid general public apathy arising from the good-natured and careless feeling that it was the natural order of politics, the common law of parties. It grew up gradually amid general ignorance of its tendency and public indifference. The spoils system may plead that, although a breach of the earlier tradition in national politics, it is really as old in New York and nearly as old in Pennsylvania as parties themselves, and that it has grown in general acquiescence. But that is only to say that public evils and abuses do not arrest attention and arouse organized resistance until they are seen to be public perils. That is now distinctly seen, and this League is the living, active, aggressive witness of the happy awakening of the public mind to the fact that the prostitution of patronage to the maintenance of party power imperils liberty today in a republic no less than the arbitrary will of a king imperiled it in a monarchy.

In appealing to public opinion to bind the executive power still more closely, by restricting the license of party in the interest of the whole people, we propose nothing which has not been often done. The very fact that party

is a convenient agency, and that its disposition is to magnify its authority, is the conclusive reason for vigilant observation of its conduct and for wholesome checks upon its action. Party is a clever servant, like Steerforth's man Littimer in David Copperfield. But the cleverer he is the more insolent, if permitted, he is likely to become, and the more firmly he needs to be disciplined. Party is the servant of the people, but it is so clever that it tends to become practically master, and bullies the individual citizen as the clever Littimer, setting the table and stirring the fire, overpowered with awe, poor little shrinking David. Those who grovel before the party as the courtiers in Siam crawl on their bellies before the king, forget that the people are really master and often break from their good-natured indifference to teach party its place.

By restraining the arbitrary power of party we would promote honest administration of the government. But when we say that our aim is honest government, we do not say that the Civil Service is dishonest. It is, therefore, no reply to our demand to allege that the percentage of loss to the Government in the collection of the revenue is inconsiderable. What we affirm is that the theory which regards places in the public service as prizes to be distributed after an election like plunder after a battle, the theory which perverts public trusts into party spoils, making public employment dependent upon personal favor and not on proved merit, necessarily ruins the self-respect of public employees, destroys the function of party in a republic, prostitutes elections into a desperate strife for personal profit and degrades the national character by lowering the moral tone and standard of the country.

Civil Service reform proposes to restrict the arbitrary power of party. It does not, of course contemplate the dissolution of parties or suppose that popular government

will be carried on without the organization of citizens who desire to promote public policies upon which they agree. Indeed, the reform will necessarily promote the legitimate power of party by making it a representative of opinion to a degree, which under the spoils system, is impossible. But as party has now become largely a machine, oiled by bribery and corruption in the form of patronage and money, and as the result of elections is coming, in the popular belief, not to indicate the popular will, but to signify merely the preponderance of "boodle" on one side or the other, party machines no more favor Civil Service Reform than kings favor the restriction of the royal prerogative.

But it is by party action, nevertheless, that reform must be secured. Why, then, do we anticipate success? Because party itself is finally subject to public opinion, and whatever the machine may wish it is at last obliged to conform to public opinion as a sailing ship to the wind. There is already a peculiarly intelligent and influential reform opinion, an opinion with independent votes, of which party machines are conscious, and to which they now formally defer. It is an opinion which is known to public officers who often share it, and, taught by official experience the practical value of reform, they introduce it cautiously into their administration. Once planted, like a vigorous sapling, it grows apace. The uniform and undeniable excellence of the result strengthens and extends the reform sentiment, and still further emboldens public officers to heed it. The futility of theoretical objections is shown by conclusive experiment, as when the first steamship crossed the ocean before Dr. Dionysus Lardner had finished demonstrating that it was impossible. The wiser and more independent sentiment of party perceives the advantage to be gained by becoming

the instrument of reform, as the wiser Whigs forty or fifty years ago strove to make their party an anti-slavery party, and, failing, saw their party disappear. Undoubtedly if the Republican party, born of that failure, had proved that it meant what it said of civil service reform in its recent platforms, it would enter upon the contest of this year a more powerful party than it is. But its platform and the declarations of Republican leaders and its observance of the reform law, like the same observance and the reform acts of the late Democratic President, show in what way despite the machines public opinion, as it strengthens, prevails, and the good work is done. The vigorous young sapling must encounter gales and frosts and droughts, but still it grows, and swells, and burgeons. So feeling its way gradually, irregularly, inconsistently, halting and stumbling, but steadily advancing, reform proceeds.

29. Civil Service Reform *

The name of Carl Schurz is closely identified with the civil service reform movement. He earnestly fought for the merit system, even to the extent of leaving his party to support another Presidential candidate who believed in that system. He came to this country following the Liberal Revolution of 1848 in Germany and served with distinction in the Civil War. He represented the State of Missouri in the United States Senate and served as Secretary of the Interior in the administration of President Hayes.

What is Civil Service Reform? It is the application of common sense and common honesty to the public service. And the American people are in the main sensible and an honest people. It is the restoration to full power of honorable and patriotic motives in our political life. And the Americans are, in the main, an honorable and

patriotic people. Therefore they will insist upon the general application and enforcement of Civil Service Reform principles in the same measure as they recognize how sensible and honest and patriotic those principles are. In the acquisition of this knowledge they are at times powerfully aided by striking object-lessons. Recently they had one of them.

The Fourth of March last a new Administration went into power. Untold thousands of men poured into the national capital clamoring for office; not for offices that were vacant, but to be vacated in order to make room for the clamorers. No matter whether he was ever so good a public servant, the man who was in was to be kicked out, to let him in who was out, no matter whether he would be not half so good a public servant. The office-hunting throng swept into the White House and into the Departments like a cloud of locusts. The President, sturdy as he is, could hardly stand up before the impetuous onset. The Cabinet ministers, all new men in their places, who felt the urgent need of studying somewhat their Department duties, were hunted down so that they had hardly time to eat and to sleep, much less to study. When their cry for pity availed nothing, they barricaded their doors with strict regulations. They went into hiding in order to save some hours for the business of the Government. The Post Office Department was not only overrun by the crowd, but snowed under with written applications and recommendations for office which in huge heaps covered the floors of the rooms, and the whole force of the Department had to work after business hours merely to open and assort them. Senators and members of the House of Representatives ran wildly about like whipped errand boys to press the claims of greedy con-

stituents or mercenary henchmen. It was what Mr. Cleveland calls the madness for spoils in finest efflorescence.

And what are these claims for office that are so vehemently urged? I know them well from long and varied experience. Special fitness for the duties of the office is the one thing which even the most daring claimant but seldom dares to claim. He does indeed claim that he can do one thing as well as another if he is only permitted to try, like the Yankee who, asked whether he could play the violin, answered, he guessed so, but he had never tried. So the office-seeker is ready to try his hand at administration. In most cases the claim to office is based upon party service, the payment or collection of money for the campaign chest, the making of speeches, or other political work deserving reward. And this claim is fortified with all sorts of reasons appealing to sympathy. Here is a patriot who has a large family to support and needs a post office to help him along. There is another who wants a consulship abroad because he himself or his wife is in bad health and a change of climate would do good, or his daughter has a fine talent for music which should be developed in Europe. There is still another who wants the prestige of official recognition in the shape of a collectorship or a marshalship to enable him to exercise still higher political authority over the minds of his fellow-citizens. A man in Kansas, so the papers report, recently urged the appointment of his daughter to some place in the postal service in connection with the World's Exhibition at Chicago, on the ground that she would be the largest public servant in the country, weighing four hundred and seventy-two pounds. And for aught I know, this qualification is as good as many of those seriously urged.

This spoils carnival has been going on since the Fourth

of March, and it is not ended yet. In a measure it continues through the larger part of the Presidential term. I affirm and maintain that the American people are heartily disgusted with a spectacle so absurd, so ludicrous, and at the same time so barbarous, shameful, and revolting—a spectacle exposing the American name to ridicule and reproach. When speaking here of the American people I do, of course, not mean all the people. I do not mean the machine politicians of the two parties, who live on spoils. I do not mean Tammany Hall. I do not mean those poor creatures in Congress and in other high places who know they have not ability enough to sustain themselves as statesmen, and depend upon a following bought with patronage to prop them up. I do not mean the selfish speculators in politics, who find in the corruption underlying the patronage trade a congenial element. Nor do I mean those who like to be fed at the public crib, no matter whether they furnish an equivalent for their salaries. All these classes are the fast friends of the spoils system; but they form only a small minority of the American people. When I speak here of the people, I mean the men and women who earn an honest living by honest industry. I mean the patriotic citizens who have the welfare of the country, the success of free institutions, and the honor of the Republic sincerely at heart.

In their earnest endeavor to serve the public interest, these people may be warm partisans. They wish their party to be successful and to win control of the Government. But a large majority of them are in their inward souls disturbed and disgusted when they see, after a party victory, hordes of partisans pounce upon the offices of the Government like a band of greedy mercenaries plundering a captured city. They are ashamed when, after the incoming of a new Administration, they

hear of a President wishing to abolish this scandal but not being permitted to do so by the ravenous spoilsmen of the party, and of an official guillotine at work and of so many heads falling every day. This shame and disgust may not, by all who feel it, be loudly expressed in words; but nevertheless it exists, as in times gone by the conscientious abhorrence of slavery existed among the masses of the Northern people long before exciting events loosened their tongues.

But there is one part of the public service which now remains untouched by the tumultuous debauch of the spoils carnival. It is like a quiet, peaceable island, with a civilized, industrious population, surrounded by the howling sea. The President and the chiefs of the Government Departments contemplate this part of the service with calmness and contentment, for it gives them no trouble while the turmoil of the office-hunt rages all around it. The good citizen, anxious for the honor of his country, beholds it with relief and satisfaction, for here he finds nothing to be ashamed of, and much that is worthy of this free and great nation. This is the "classified service," covered by the Civil Service Law, the creation of Civil Service Reform. On the portals the words are written: "Nobody enters here who has not proved his fitness for the duties to be performed." The office-hunting mob reads this and recoils. The public servant within it calmly walks the path of his duty, undisturbed by the thought of the greedy cormorant hungering for his place. He depends upon his merit for his security and advancement, and this consciousness inspires his work. This is the application of common sense and common honesty to the public service. It is Civil Service Reform.

The present Civil Service Law was enacted under President Arthur. Under the Rules established by virtue of

it applicants for clerkships and other subordinate places in the Government Departments in Washington and in the greater custom-houses and post offices in the country have to pass appropriate competitive examinations to prove their fitness for the places they seek, and the appointments are made from those rated highest, without any regard to political affiliation or influence. Removals are discretionary with the appointing power; but inasmuch as the element of favoritism is eliminated from appointments, removals are no longer made merely to make room for more favored individuals. The public servant who proves himself faithful and efficient is, therefore, wherever the law is honestly observed, substantially secure, no matter to what party he may belong.

The truest definition of democratic government is furnished by Abraham Lincoln's famous saying that it is "government of the people, by the people, and for the people:" of the people, for the people, constitute the sovereignty from which it springs; by the people, for the people through their chosen representatives and servants conduct it; for the people, for it is to be conducted solely for the people's benefit. The people are, therefore, evidently entitled to the best service they can get, and no interest, neither that of a political party nor that of any citizen, has a right to stand in the way. Those entrusted with the power of appointing officers are, consequently, in duty bound to regard office solely as a public trust, and to appoint only persons found fittest to give the people the best possible service.

Democratic government rests upon the principle of equal rights. It abhors privilege and favoritism. But it is privilege and favoritism upon which the spoils system rests—the privilege of those in authority or of influential politicians to dispose of the public offices as their

patronage, distributing that patronage by way of personal or political favor. It is justly said that the offices belong to the people and must be open to the people. Most certainly. But what does this mean? Does it mean that they must be open only to those who have influence themselves, or who have the influence of powerful politicians behind them? No; according to true Democratic principle it means that the offices must be open to all citizens according to their fitness to fill them; that they must be most open to those who are most fit to fill them; that free and equal opportunity must be furnished to all for showing who are the most fit, whether they be rich or poor, politicians or no politicians, backed by influence or not backed. Under the spoils system the offices are open only to the privileged few—those favored by the influence of the powerful. Civil Service Reform has undertaken to open the offices to all according to their ability to serve the people. The spoils system asks the candidate for office: "Does your member of Congress recommend you, or does the party boss in your State or your county ask your appointment? Or are you backed by a man who gives much money to our campaign fund? What men of influence have you behind you? If you have none, you can have no place." Civil Service Reform asks the candidate: "Are you a man of good character, and what can you show to prove it? What do you know? What can you do? What qualifications have you for serving the people? Have you more than other candidates for the place?" On the one side, under the spoils system, the aristocracy of influence —and a very vulgar aristocracy it is—robbing the man who has only merit, unbacked by power, of his rightful chance. On the other hand, Civil Service Reform, inviting all freely to compete, and then giving the best chance to the best man, be that man ever so lowly, and be his com-

petitor ever so great a favorite of wealth or power. On that side the aristocracy of "pull," on this the democracy of merit.

The spoils politician is fond of objecting that Civil Service examinations do not always point out the fittest man for the place. Perhaps not always. The best marksman does not hit the bull's-eye every time; but he misses it rarely. The Civil Service examinations may have a small record of failures. But what the system, fairly conducted, always does is to snatch public office from the undemocratic control of influence and favoritism. And there is the point which stings the spoils politician. It would trouble him little whether or not the fittest man is put in the proper field of action. That is not what he cares for. But that the reformed system so effectively repels the demoralizing touch of political favor, that it so thoroughly takes away from the office the character of spoil, that it does not tolerate public place to be a means of bribery and an article of barter—this the spoils politician will never forgive us, for it destroys his trade. The very democracy of Civil Service Reform makes the spoilsman's heart sore with sorrow, and in the bitterness of his soul he wildly denounces it as an aristocratic notion imported from England, and as a thoroughly un-American contrivance.

One by one the old fictions by which the spoils politician sought to discredit Civil Service Reform are vanishing into thin air. Of the demagogic pretense that it is an outlandish notion imported from England, and an un-American contrivance, I have already spoken. We still hear sometimes the silly story that it will build up an office-holding aristocracy. That people should fear the growing up among us of an aristocracy of millionaires—that I can conceive. But think of an aristocracy of revenue col-

lectors, custom-house appraisers, district-attorneys, and United States marshals! Imagine a nobility composed of postmasters, Indian agents and Department clerks! If there be anything like a feudal aristocracy in politics, it is that born of the spoils system—the party bosses, the machine leaders, the dealers-out of patronage—such as King Croker, Duke Murphy, Marquis Sheehan, Earl Gilroy and the sturdy barons holding fiefs and wielding power as Tammany district leaders here—a somewhat rough nobility to be sure, but quite as enterprising as any that levied tax on unprotected merchants' wagons and upon the unwary traveler's purse in the Middle Ages.

There is the other curious conceit that the spoils of office are necessary to hold political parties together, to create an interest in public affairs among the people, and to give life and spirit to our political contests. Is this possible? Look at England, where, after the overthrow of one party and the coming into power of another, scarcely more than sixty offices change hands. Look at Germany, where the victory of one and the defeat of another party involve no change in the administrative machinery at all. There are no spoils there, but are there no parties?

We hear it said that the "heelers" and the men of dirty work are necessary for party organization. Remove the spoils system, and you will see how superfluous they are. Their places will be taken by men who attend to organization with no less zeal and far more honorable purpose. This city groans under Tammany dominion, and Tammany asserts that its methods are necessary to hold an effective party organization together. Take away the spoils, put all the non-elective places, from the department commissioner to the street-sweeper, under sound and strict Civil Service rules, and there will be the end of Tammany. But the city will have other organizations for government, and

then a government of public spirit, a government in which the best men will be proud to take part; and it will at once appear how little the political ardor and activity of the Tammany kind was required to make New Yorkers happy. We hear it said that the possession and the use of the spoils of office is needed to render a political party strong and successful. It is refreshing to see what the American people have of late come to think of the virtue imparted to a political party by the possession of the plunder. In 1884 the Republicans had all the offices, and they were defeated; in 1888 the Democrats had all the offices, and they were defeated; in 1892 the Republicans had all the offices, and they were defeated. And if in 1896 the Democrats should have all the offices again, that possession would certainly not save them from defeat.

As an element of party strength the possession of the offices has clearly proved a failure. The wise politician will seriously consider in the light of recent history, whether it is not really an element of party weakness.

CHAPTER VIII

ORGANIZATION AND WORK OF CONGRESS

30. The Speakership *

In the first session of the Fifty-first Congress, Thomas B. Reed of Maine was elected Speaker of the House of Representatives. The Republicans had so small a majority that the Democrats, by refusing to answer the roll, although they were present in the House, could prevent a quorum. Speaker Reed resolved to prevent such dilatory tactics by directing the Clerk to record the names of those present and refusing to vote. This raised a storm of protests which took days to subside. The Speaker further refused to entertain motions to adjourn when he was satisfied that they were made to prevent business from being done. The contest which raged over these actions of the Speaker was "the most historic controversy in the development of the law of the House." By virtue of these rulings, and because of his high character and ability, Speaker Reed is ranked as one of the greatest parliamentary leaders this country has produced. His rulings on the question of counting a quorum and on the question of entertaining dilatory motions follow.

The chair will now make a statement to the House and the matter can proceed in orderly fashion if gentlemen will only be in order.

The Clerk announces the members voting in the affirmative as 161 and 2 who voted in the negative. The Chair thereupon, having seen the members present, having heard their names called in their presence, directed the call to be repeated, and, gentlemen not answering when thus called,

the Chair directed a record of their names to be made showing the fact of their presence as bearing upon the question which has been raised, namely, whether there is a quorum of this House present to do business or not, according to the Constitution of the United States; and accordingly that question is now before the House, and the Chair purposes to give a statement accompanied by a ruling, from which an appeal can be taken if any gentleman is dissatisfied therewith.

It has been almost an every-day occurrence at certain stages of the session for votes to be announced by the Chair containing obviously and mathematically no quorum; yet if the point was not made the bill has always been declared to be passed. Now, that can only be upon a very distinct basis, and that is, that everybody present silently agreed to the fact that there was a quorum present, while the figures demonstrated no quorum voting.

There is no ground by which under any possibility such a bill could be passed constitutionally, unless the presence of a quorum is inferred. It is inferred from the fact that no one raised the question, and the presence was deemed enough.

Now, all methods of determining a vote are of equal value. The count by the Speaker or Chairman and the count by tellers or a count by the yeas and nays are all of them of equal validity. The House has a right, upon the call of one-fifth of the members, to have a yea-and-nay vote, and then upon that the question is decided; but the decision in each of the other cases is of precisely the same validity.

Again, it has always been the practice in parliamentary bodies of this character, and especially in the Parliament of Great Britain, for the Speaker to determine the question whether there is or is not a quorum present by count.

It is a question that is a determination of the actual presence of a quorum, and the determination of that is intrusted to the presiding officer in almost all instances. So that when a question is raised whether there is a quorum or not, without special arrangement for determining it, it would be determined on a count by the presiding officer. Again, there is a provision in the Constitution which declares that the House may establish rules for compelling the attendance of members. If members can be present and refuse to exercise their function, to wit, not be counted as a quorum, that provision would seem to be entirely nugatory. Inasmuch as the Constitution only provides for their attendance, that attendance is enough. If more was needed the Constitution would have provided for more.

The Chair thereupon rules that there is a quorum present within the meaning of the Constitution and the gentleman from Georgia appeals from the decision of the Chair.

The Chair rules the motion to adjourn to be not in order. The Chair will make a statement to the House.

The House will not allow itself to be deceived by epithets. The facts which have transpired during the last few days have transpired in the presence of this House and of a very large auditory. No man can describe the action and judgment of this Chair in language which will endure unless that description be true.

A man much more famous than any in this Hall said many years ago that nobody could write him down but himself. Nobody can talk any members of this House down except himself.

Whatever is done has been done in the face of the world and is subject to its discriminating judgment. The proceedings of this House, so far as the Chair is con-

cerned, have been orderly, suitable, in conformity to the rules of parliamentary law, and the refusal of the Chair to entertain the motion to adjourn at this juncture is strictly in accordance therewith.

There is no possible way by which the orderly methods of parliamentary procedure can be used to stop legislation. The object of a parliamentary body is action, and not stoppage of action. Hence, if any member or set of members undertakes to oppose the orderly progress of business, even by the use of the ordinarily recognized parliamentary motions, it is the right of the majority to refuse to have those motions entertained, and to cause the public business to proceed.

Primarily the organ of the House is the man elected to the Speakership. It is his duty in a clear case, recognizing the situation, to endeavor to carry out the wishes and desires of the majority of the body which he represents. Whenever it becomes apparent that the ordinary and proper parliamentary motions are being used solely for the purposes of delay and obstruction; when members break in an unprecedented way over the rule in regard to the reading of the Journal; when a gentleman steps down to the front, amid the applause of his associates on the floor, and announces that it is his intention to make opposition in every direction, it then becomes apparent to the House and to the community what the purpose is. It is then the duty of the occupant of the Speaker's chair to take, under parliamentary law, the proper course with regard to such matters; and in order that there might not be any misunderstanding as to whether or not it is the wish or desire of the majority of the House—apparent as it seems to be—the question of the appeal from the refusal of the Chair to entertain the motion will be put to the House for its judgment and determination.

31. The Right of Petition *

After having served his country in the capacities of Ambassador, Secretary of State, and President, John Quincy Adams was elected to the House of Representatives in 1831 and served there with the greatest distinction until his death in 1848. During his eighteen years in Congress he championed the right of petition with the utmost vigor and courage. This selection is taken from his remarks in the House in 1837 at the time when he was being severely attacked and when a motion for censuring him was pending. This parliamentary battle was probably the greatest of the long and eventful career of "The Old Man Eloquent," as he was familiarly called, and his speech demonstrates the great ability and high character of the man.

Sir, it is well known to all the members of this House, it is certainly well known to all petitioners for the abolition of slavery in the District of Columbia, that from the day I entered this House down to the present moment, I invariably here, and invariably elsewhere, declared my opinions to be adverse to the prayer of petitions which call for the abolition of slavery in the District of Columbia. But, sir, it is equally well known that, from the time I entered this House down to the present day, I have felt it a sacred duty to present any petition, couched in respectful language, from any citizen of the United States, be its object what it may; be the prayer of it that in which I could concur, or that to which I was utterly opposed. It is for the sacredness of the right of petition that I have adopted this course.

Where is your law which says that the mean, and the low, and the degraded, shall be deprived of the right of petition, if their moral character is not good? Where, in the land of freemen, was the right of petition ever placed on the exclusive basis of morality and virtue? Petition is supplication—it is entreaty—it is prayer! And where

is the degree of vice or immorality which shall deprive the citizen of the right to supplicate for a boon, or to pray for mercy? Where is such a law to be found? It does not belong to the most abject despotism. There is no absolute monarch on earth who is not compelled by the constitution of his country to receive the petitions of his people, whosoever they may be. The Sultan of Constantinople cannot walk the streets and refuse to receive petitions from the meanest and vilest in the land. This is the law even of despotism. And what does your law say? Does it say that, before presenting a petition, you shall look into it, and see whether it comes from the virtuous, and the great, and the mighty? No, sir, it says no such thing; the right of petition belongs to all. And, so far from refusing to present a petition because it might come from those low in the estimation of the world, it would be an additional incentive, if such incentive were wanting.

It is, sir, a right belonging to every human creature, which does not depend upon the condition of the petitioner, and which cannot be denied to man in any condition. This, sir, is the principle involved in the inquiry put by me to the Chair—a principle more than recognized by the constitution, which has declared that this right shall suffer no abridgment, no limitation whatever! If you now abolish this principle, this first and humblest right given from God to every human being, a limitation will next be put to the right of petitioning, in fullest extent to which party madness might hereafter be inclined to carry it. If the House shall decide that the paper I possess comes under the order of the House of the 18th of January, I will present the petition, and in doing so shall be doing my duty—a duty of the highest importance to my country, to humanity, and to human nature. What, sir? Will you put the right of petitioning, of craving for help

and mercy and protection, on the footing of political privileges? It is an idea which has not ever been entertained by the utmost extreme of human despotism; no despot, of any age or clime, has ever denied this humble privilege to the poorest or the meanest of human creatures. If this House decides that it will not receive petitions from slaves, under any circumstances, it will cause the name of this country to be enrolled among the first of barbarous nations. A petition is supplication; and supplication for what? For relief from those who have the power to give relief, and who are placed in a situation to attend to the cry of distress. That would be a sad day, sir, in my opinion, when a vote should pass the House that would not receive a petition from slaves. What would it lead to? When the principle is once begun of limiting the right of petition, where would it stop?

32. The Committee System * [1]

No part of the work of Congress is more important than the work of its committees. The influence of members is most often gauged by their committee assignments, for when they rise in the committee system they become more important and influential. A discerning criticism of the system written by James Bryce, who was British Ambassador to the United States from 1907 to 1913, is given below. The criticism appeared in his "American Commonwealth", which is considered to be the most comprehensive, appreciative and profound study ever made of American institutions.

The most abiding difficulty of free government is to get large assemblies to work promptly and smoothly either for legislative or executive purposes. We perceive this difficulty in primary assemblies of thousands of citizens, like those of ancient Athens or Syracuse; we see it again in

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the smaller representative assemblies of modern countries. Three methods of overcoming it have been tried. One is to leave very few and comparatively simple questions to the assembly, reserving all others for a smaller and more permanent body, or for executive officers. This was the plan of the Romans, where the comitia (private assemblies) were convoked only to elect magistrates and pass laws, which were short, clear, and submitted en bloc, without possibility of amendment, for a simple Yes or No. Another method is to organize the assemblies into well-defined parties, each recognizing and guided by one or more leaders, so that on most occasions and for most purposes the rank and file of members exert no volition of their own, but move like battalions at the word of command. This has been the English system since about the time of Queen Anne. It was originally worked by means of extensive corruption; and not till this phase was passing away did it become an object of admiration to the world. Latterly it has been reproduced in the parliaments of most modern European states and of the British colonies. The third method, which admits of being more or less combined with the second, is to divide the assembly into a number of smaller bodies to which legislative and administrative questions may be referred, either for final determination or to be reported on to the whole body. This is the system of committees, applied to some extent in England, to a larger extent in France under the names of bureaus and commissions, and most of all in the United States.

To some one of the standing committees each and every bill is referred. Not having been discussed, much less affirmed in principle, by the House, a bill comes before its committee with no presumption in its favor, but rather as a shivering ghost stands before Minos in the

nether world. It is one of many, and for the most a sad fate is reserved. The committee may take evidence regarding it, may hear its friends and its opponents. They usually do hear the member who has introduced it, since it seldom happens that he has himself a seat on the committee. Members who are interested approach the committee and state their case there, not in the House, because they know that the committee can amend the bill as they please, and although they cannot formally extinguish it, they can practically do so by reporting adversely, or by delaying to report it till late in the session, or by not reporting it at all.

In one or other of these ways nineteen-twentieths of the bills introduced meet their death, a death which the majority doubtless deserve, and the prospect of which tends to make members reckless as regards both the form and the substance of their proposals. A motion may be made in the House that the committee do report forthwith, and the House can of course restore the bill, when reported, to its original form. But these expedients rarely succeed, for few are the measures which excite sufficient interest to induce an impatient and over-burdened assembly to take additional work upon its own shoulders or to overrule the decision of a committee.

The deliberations of committees are usually secret. Evidence is frequently taken with open doors, but the newspapers do not report it, unless the matter excite public interest; and even the decisions arrived at are often noticed in the briefest way. It is out of order to canvass the proceedings of a committee in the House until they have been formally reported to it; and the report submitted does not usually state how the members have voted, or contain more than a very curt outline of what has passed.

No member speaking in the House is entitled to reveal anything further.

A committee have technically no right to initiate a bill, but as they can either transform one referred to them, or, if none has been referred which touches the subject they seek to deal with, can procure one to be brought in and referred to them, their command of their own province is unbounded. Hence the character of all the measures that may be passed or even considered by the House upon a particular branch of legislation depends on the composition of the committee concerned with that branch. Some committees, such as those on naval and military affairs, and those on the expenditure of the several departments, deal with administration rather than legislation. They may summon the officials of the departments before them, and interrogate them as to their methods and conduct. Authority they have none, for officials are responsible only to their chief, the President, who may refuse to allow the official to appear; but the power of questioning is sufficient to check if not to guide the action of a department, since imperative statutes may follow, and the department, sometimes desiring legislation and always desiring money, has strong motives for keeping on good terms with those who control legislation and the purse. It is through these committees chiefly that the executive and legislative branches of government touch one another. Yet the contact, although the most important thing in a government, is the thing which the nation least notices, and has the scantiest means of watching.

The scrutiny to which the administrative committees subject the departments is so close and constant as to occupy much of the time of the officials and seriously interfere with their duties. Not only are they often summoned to give evidence: they are required to furnish minute re-

ports on matters which a member of Congress could ascertain for himself. Nevertheless the House committees are not certain to detect abuses or speculation, for special committees of the Senate have repeatedly unearthed dark doings which had passed unsuspected the ordeal of a House investigation. After a bill has been debated and amended by the committee it is reported back to the House, and is taken up when that committee is called in its order. One hour is allowed to the member whom his fellow committeemen have appointed to report. He seldom uses the whole of this hour, but allots part of it to other members, opponents as well as friends, and usually concludes by moving the previous question. This precludes subsequent amendments and leaves only an hour before the vote is taken. As on an average each committee (excluding the two or three great ones) has only two hours out of the whole ten months of Congress allotted to it to present and have discussed all its bills, it is plain that few measures can be considered, and each but shortly, in the House. The best chance of pressing one through is under the rule which permits the suspension of standing orders by a two-thirds majority during the last six days of the session.

What are the results of this system?

It destroys the unity of the House as a legislative body. Since the practical work of shaping legislation is done in the committees, the interest of members centers there, and they care less about the proceedings of the whole body. It is as a committeeman that a member does his real work. In fact the House has become not so much a legislative assembly as a huge panel from which committees are selected.

It prevents the capacity of the best members from being brought to bear upon any one piece of legislation, however important. The men of most ability and ex-

perience are chosen to be chairmen of the committees, or to sit on the two or three greatest. For other committees there remains only the rank and file of the House, a rank and file nearly half of which is new at the beginning of each Congress. Hence every committee (except the aforesaid two or three) is composed of ordinary persons, and it is impossible, save by creating a special select committee, to get together what would be called in England "a strong committee," i. e. one where half or more of the members are exceptionally capable. The defect is not supplied by discussion in the House, for there is no time for such discussion.

3 It cramps debate. Every foreign observer has remarked how little real debate, in the European sense, takes place in the House of Representatives. The very habit of debate, the expectation of debate, the idea that debate is needed, have vanished, except as regards questions of revenue and expenditure, because the center of gravity has shifted from the House to the committees.

4 It lessens the cohesion and harmony of legislation. Each committee goes on its own way with its own bills just as though it were legislating for one planet and the other committees for others. Hence a want of policy and method in congressional action. The advance is haphazard; the parts have little relation to one another or to the whole.

5 It gives facilities for the exercise of underhand and even corrupt influence. In a small committee the voice of each member is well worth securing, and may be secured with little danger of a public scandal. The press cannot, even when the doors of committee rooms stand open, report the proceedings of sixty bodies; the eye of the nation cannot follow and mark what goes on within them; while the subsequent proceedings in the House

are too hurried to permit a ripping up there of suspicious bargains struck in the purlieus of the Capitol, and fulfilled by votes given in a committee. I do not think that corruption, in its grosser forms, is rife at Washington. It appears chiefly in the milder form of reciprocal jobbing or (as it is called) "log-rolling." But the arrangements of the committee system have produced and sustain the class of professional "lobbyists," persons who make it their business to "see" members and procure, by persuasion, importunity, or the use of inducements, the passing of bills, public as well as private, which involve gain to their promoters.

6 It reduces responsibility. In England, if a bad Act is passed or a good bill rejected, the blame falls primarily upon the ministry in power whose command of the majority would have enabled them to defeat it, next upon the party which supported the ministry, then upon the individual members who are officially recorded to have "backed" it and voted for it in the House. The fact that a select committee recommended it—and comparatively few bills pass through a select committee—would not be held to excuse the default of the ministry and the majority. But in the United States the minstry cannot be blamed, for the cabinet officers do not sit in Congress; the House cannot be blamed because it has only followed the decision of its committee; the committee may be an obscure body, whose members are too insignificant to be worth blaming. The chairman is possibly a man of note, but the people have no leisure to watch sixty chairmen: they know Congress and Congress only; they cannot follow the acts of those to whom Congress chooses to delegate its functions. No discredit attaches to the dominant party, because they could not control the acts of the eleven men in the committee room. This public displeasure rarely

finds a victim, and everybody concerned is relieved from the wholesome dread of damaging himself and his party by negligence, perversity, or dishonesty. Only when a scandal has arisen so serious as to demand investigation is the responsibility of the member to his constituents and the country brought duly home.

It lowers the interest of the nation in the proceedings of Congress. Except in exciting times, when large questions have to be settled, the bulk of real business is done not in the great hall of the House but in this labyrinth of committee rooms and the lobbies that surround them. What takes place in view of the audience is little more than a sanction, formal indeed but hurried and often heedless, of decisions procured behind the scenes, whose mode and motives remain undisclosed. Hence people cease to watch Congress with that sharp eye which every principal ought to keep fixed on his agent. Acts pass unnoticed whose results are in a few months discovered to be so grave that the newspapers ask how it happened that they were allowed to pass.

The country of course suffers from the want of light and leading on public affairs which debates in Congress ought to supply. But this is more fairly chargeable to defects of the House which the committees are designed to mitigate than to the committee themselves. The time which the committee work leaves for the sittings of the House is long enough to permit due discussion did better arrangements exist for conducting it.

It throws power into the hands of the chairmen of committees, especially, of course, of those which deal with finance and with great material interests. They become practically a second set of ministers, before whom the departments tremble, and who, although they can neither appoint nor dismiss a postmaster or a tide-waiter, can by

legislation determine the policy of the branch of administration which they oversee. This power is not necessarily accompanied by responsibility, because it is largely exercised in secret.

10 It enables the House to deal with a far greater number of measures and subjects than could otherwise be overtaken; and has the advantage of enabling evidence to be taken by those whose duty it is to re-shape or amend a bill. It replaces the system of interrogating ministers in the House which prevails in most European chambers; and enables the working of the administrative departments to be minutely scrutinized.

11 It sets the members of the House to work for which their previous training has fitted them much better than for either legislating or debating "in the grand style." They are shrewd, keen men of business, apt for talk in committee, less apt for wide views of policy and elevated discourse in an assembly. The committees are therefore good working bodies, but bodies which confirm congressmen in the intellectual habits they bring with them instead of raising them to the higher platform of national questions and interests.

Summing up, we may say that under this system the House despatches a vast amount of work and does the negative part of it, the killing off of worthless bills, in a thorough way. Were the committees abolished and no other organizations substituted, the work could not be done. But much of it, including most of the private bills, ought not to come before Congress at all; and the more important part of what remains, viz., public legislation, is dealt with by methods which secure neither the pressing forward of the measures most needed, nor the due debate of those that are pressed forward.

Why, if these mischiefs exist, is the system of committee legislation maintained?

It is maintained because none better has been, or, as most people think, can be devised. "We have," say the Americans, "over four hundred members in the House, most of them eager to speak, nearly all of them giving constant attendance. The bills brought in are so numerous that in our two sessions, one of seven or eight months, the other of three months, not one-twentieth could be fairly discussed on second reading or in committee of the Whole. If even this twentieth were discussed, no time would remain for supervision of the departments of State. That supervision itself must, since it involves the taking of evidence, be conducted through committees. In England one large and strong committee, viz., the ministry of the day, undertakes all the more important business, and watches even the bills of private members. Your House of Commons could not work for a single sitting without such a committee, as is proved by the fact that when you are left for a little without a ministry, the House adjourns. We cannot have such a committee, because no office-holder sits in Congress. Neither can we organize the House under leaders, because prominent men have among us little authority, since they are unconnected with the executive, and derive from the people no title to leadership. Neither can we create a ruling committee of the majority, because this would be disliked as an undemocratic institution. Hence our only course is to divide the unwieldy multitude into small bodies capable of dealing with particular subjects. Each of them is no doubt powerful in its own sphere, but that sphere is so small that no grave harm can result. The Acts passed may not be the best possible; the legislation of the year may resemble a patchwork quilt, where each piece is different in color and texture from

the rest. But as we do not need much legislation, and as nearly the whole field of ordinary private law lies outside the province of Congress, the mischief is slighter than you Europeans expect. If we made legislation easier, we might have too much of it; and in trying to give it the more definite character you suggest, we might make it too bold and sweeping. Be our present system bad or good, it is the only system possible under our Constitution, and the fact that it was not directly created by that instrument, but has been evolved by the experience of four or five generations, shows how strong must be the tendencies whose natural working has produced it."

33. The Senate [1]

This is another acute observation made by Roosevelt, based upon his experiences as President of the Senate and President of the United States. Rarely has the Senate been better described than in this passage.

It is a very powerful body with an illustrious history, and life is easy in it, the Senators not being harassed as are members of the lower House, who go through one campaign for their seats only to begin another. The *esprit de corps* in the Senate is strong, and the traditions they inherit come from the day when, in the first place, men duelled and were more considerate of one another's feeling, even in doing business; and when, in the second place, the theories of all doctrinaire statesmen were that the one thing that was needed in government was a system of checks, and that the whole danger to government came not from inefficiency but from tyranny. In consequence, the Senate has an immense capacity for resistance. There is no closure, and if a small body of men are sufficiently

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resolute they can prevent the passage of any measure until they are physically wearied out by debate. The Senators get to know one another intimately and tend all to stand together if they think any one of them is treated with discourtesy by the Executive.

I do not see that the Senate is any stronger relatively to the rest of the government than it was sixty or seventy years ago. Nor do I think that the Senate and the lower House taken together are any stronger with reference to the President than they were a century ago. Some of the things the Senate does really work to increase the power of the Executive. They are able so effectually to hold up action when they are consulted, and are so slow about it, that they force a President who has any strength to such individual action as I took in both Panama and Santo Domingo. In neither case would a President a hundred years ago have ventured to act without previous assent by the Senate. . . . In this nation, as in any nation which amounts to anything, those in the end must govern who are willing actually to do the work of governing; and in so far as the Senate becomes a merely obstructionist body it will run the risk of seeing its power pass into other hands.

34. Executive Powers of the Senate * [1]

The opinion stated here was given by John Adams in 1809 and is of interest at the present time.

It may be thought presumption in me to impute errors to the nation; but, as I have never concealed from the people any truth which it was important to them to know, nor any opinion of my own, which was material in public affairs, I hope to be excused if I suggest, that the general

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sentiment in most parts of the continent, that all the danger to liberty arises from the executive power, and that the President's office cannot be too much restrained, is an error.

Corruption in almost all free governments has begun and been first introduced in the legislature. When any portion of executive power has been lodged in popular or aristocratical assemblies, it has seldom, if ever, failed to introduce intrigue. The executive powers lodged in the Senate are the most dangerous to the Constitution and to liberty, of all the powers in it. The people, then, ought to consider the President's office as the indispensable guardian of their rights. I have ever, therefore, been of opinion, that the electors of President ought to be chosen by the people at large. The people cannot be too careful in the choice of their Presidents; but when they have chosen them, they ought to expect that they will act their own independent judgments, and not be wheedled nor intimidated by factious combinations of senators, representatives, heads of departments, or military officers.

35. The Power of the Senate *[1]

Samuel W. McCall, who wrote this article in 1903, was for many years a distinguished and respected member of the House of Representatives. He was a close student of Congress in particular and of government in general, and his contributions to the literature of these subjects have been noteworthy and numerous. Although the relative positions of the two Houses of Congress have undergone some changes in the last twenty years, due principally to the adoption of a federal budget system, nevertheless Mr. McCall's observations still hold true today. In fact after a lapse of twenty years, even with Senators now elected directly by the people, and with a closure rule in existence, the position of the Senate is quite unchanged.

[1] Reprinted with the permission of The Atlantic Monthly.

Shortly before daybreak, in the closing night of the session of the Congress which came to an end on the 4th of last March, Mr. Cannon made a remarkable speech. One of the great appropriation bills of vital importance to the government was in conference between the two Houses. Unless it should pass before twelve o'clock on that day it would be necessary to have an extra session, or the wheels of some of the great governmental departments would be stopped. A Senator had delivered an ultimatum that an ancient claim of his state should be fastened upon the bill, or, as an alternative, he would talk until the end of the session and defeat the measure. Under the rules of the Senate it was clearly in the power of one of the Senators to carry on, as long as his physical strength would last, the appearance of debate, which would in no fair sense be debate at all, but simply a forcible stopping of the legislative machine. Mr. Cannon very unwillingly consented to pay the price demanded, but he declared with emphasis that the Senate should change its procedure, or that another body, "backed up by the people, will compel that change, else this body, close to the people, shall become a mere tender, a mere bender of the pregnant hinges of the knee to submit to what any one member of another body may demand of this body as a price for legislation." Such instances of the effect of the rules of the Senate are by no means rare.

From the time of the adoption of the Constitution to the present day there have been frequent protests against the large measure of power possessed by the Senate, especially in view of the very unequal and very unrepresentative principle upon which that body is constituted, but its power appears to have fattened upon these protests, and to have been, on the whole, increasing. If, in spite of the constitution of the Senate, its power has been employed

as a rule for the general good, it must be remembered that something can be said in favor of the most unequal system of government that has ever existed. The purest despotisms and the most exclusive oligarchies have frequently been responsive to popular opinion, and have often sheltered order and sometimes individual freedom. I shall take for granted, however, that the democratic idea, which our nation is supposed to represent, will be accepted without argument as applied to North America. Caution compels me to say "as applied to North America," for the government of the American people has decreed that the "consent-of-the-governed" declaration of our forefathers was either not a declaration of a principle at all, or had only a local application and did not possess vitality across the seas.

The great and growing power of the Senate is not more odious on account of any degeneracy in its personnel. The lament of the degeneracy of the present as compared with the past is one of the oldest things one can find in history. There always have been, and there probably always will be, people in the world who disparage the times in which they live—people who, as Macaulay said, are always painting a golden age which never existed save in their imaginations. I am not one of those who think that the talent in public life has declined. I believe it is true that, on the whole, even the national Congress for the last ten years will compare very favorably with the national Congress of any other time in our history. Some exceptionally great figure may depart from one House or the other and be greatly missed for a time, but the average of membership maintains itself very fairly.

The striking circumstance in connection with the power of the Senate is that it holds the commanding place at the center of the government. It brings to mind

the condition of things in Europe under the feudal system, where the nobles had the position between the king and the people, and gradually encroached upon both until they were able to oppress both,—a condition which continued until a union was effected between the people and the sovereign, and the feudal system was finally overthrown. The Senate shares the powers of legislation with the House and some of the most important executive functions with the President. The latter is unable to appoint a collector or a postmaster, or even a member of his own official household, without the Senate's consent. Such important powers, exercised at the center of the state, would naturally increase by encroachment upon both extremes, and they certainly would not diminish.

The course of the Revolution made it almost inevitable that in the Continental Congress, and in the Congress under the Articles of Confederation, the states should vote as a unit and exercise an equal authority; but when the time came to formulate the Constitution, the most enlightened of our statesmen were strongly impressed with the idea that there could not be such a thing as a permanent free government established upon so unequal a principle. The question of the relative power of the larger and small states in the new government became a pressing one. That was the rock upon which the Convention was more than once very nearly destroyed. In the long contest which ensued it must be admitted that the representatives of the small states played the better game and won upon almost all points. Their most effective resource was found in the ardent desire of the leading statesmen from the larger states to substitute a real national government for the mere shadow of a government that then existed, and they made the larger states pay a high price to obtain it. They secured an equal rep-

resentation in the Senate, and they exaggerated the powers of the body by conferring upon it a great variety of important functions.

The large states made a determined stand upon the question of taxation. They insisted that the people and not the states paid the taxes, and that, as the larger states would yield more taxes than the smaller states, the representatives of the people, chosen substantially upon the basis of population, should have a peculiar control over revenue bills. Mr. Gerry well stated the prevailing idea of the time with reference to taxation when he said, "Taxation and representation are strongly associated in the minds of the people, and they will not agree that any but their immediate representatives shall meddle with their purses."

Although the representatives of the smaller states insisted upon an equal power even over revenue bills, they did not lack in thrift when it came to guarding themselves against liability to pay an equal share of the expenses of the government, and the Constitution accordingly provided that representation and direct taxes should be apportioned among the states according to population.

An apparent concession, however, was finally made by the small states with regard to revenue bills, and I shall refer to it more fully hereafter, because it is the one point where I think the Senate, not satisfied with the great powers conferred upon it, has directly encroached upon the prerogatives of the House. Having secured the great grant of power in the Constitution, the smaller states then demanded a provision that that instrument should never be amended so as to take away the equal representation of the states in the Senate without the consent of every state, —something which obviously it would be impossible to obtain, and which was equivalent to providing that the

Constitution, in that particular, should never be amended at all.

The constitution of the Senate was recognized, at the time of its establishment, as a violation of the democratic principle, but a violation which the peculiar conditions seemed to require, and I think it was never imagined that the inequality would not be limited to that which existed, or might grow out of the states at first forming the Union. While the Senate's constitutional powers have not changed, the course of events has greatly intensified their undemocratic character. The practical inequality originally was sufficiently bad, but, by the admission of so many new and small states, it has become almost intolerable. The original inequality bore heavily upon three states, yet was not essentially glaring with reference to the others; but today it is possible to select fifteen states having together in round numbers five millions of people, or about two-thirds of the population of the state of New York. The senatorial representatives of those five millions would lack only a single vote of the number necessary to defeat some great treaty which the Senators of the other seventy millions might support. States having less than one-sixth of the population choose a majority of the entire Senate, while more than five-sixths of the people of the country are represented by a minority of that body. The state of Nevada, under the last census, had less than forty-three thousand people. If New York were permitted to have the same proportional representation in the Senate, it would have some three hundred and fifty Senators. There are many things in the constitution of the Senate which are admirable. Such a conservative body is today of vital importance. The length of the term, the different method of choice from that of Representatives, and the very gradual change in membership, are highly valuable

features. But none of its good features grows out of the great inequality of its constitution, giving one man in one section of the country the power of a hundred equally good men in another.

This exaggerated inequality, so utterly subversive of the American dogma of government, is undoubtedly the great fault in the constitution of the Senate. There is none of the common traditional attributes of aristocracy that enters into this situation. The theory of government which treats sovereignty as a mere possession, passing from father to son like any other species of property, at least has something human in it. But even the human element disappears entirely when a capricious bestowal of power is made upon a mere incorporation. If the owners of land and other property, the mercantile interests, and the workingmen are treated as classes and permitted to choose their representatives in the governing body, there is at least a representation of the diversity of interests with which legislation deals. And the proposition is not entirely lacking in force that individuals, separated from property or class interests, are affected in much the same way by legislation, and have a substantial identity of interests. In other words, that the touch of nature will affect legislators when they pass laws concerning life and liberty to which they themselves will be subject; and that they are representatives in a stronger sense than if they exercised a mere delegated authority; but that property and class rights are dealt with, the rapacity of one class should be held in check by the rapacity of another, and that there should be such a balance in the assembly that those broad interests which are weak in mere numbers should not be devoured by those that are strong. But what conceivable thing is there in the state of Nevada, estimable as her people doubtless are, to

entitle one individual there to a hundred times as much weight in governing the country as is possessed by a man residing in New York or Pennsylvania or Illinois, or indeed to a particle greater weight? On any rational theory of government such inequality is unthinkable, unless, indeed, it be true that those having a particular occupation should exercise a special and almost potent control in governing the myriads of other occupations.

The great practical encroachment of the power of the Senate beyond its fair constitutional limits is seen in connection with bills relating to taxation. The chief concession in the formation of the Constitution was that by which the large states were given at least the appearance of a special power over taxation in proportion to their population as a set-off against the great proportional powers given the small states through their equal representation in the Senate. The small states, however, on the basis of population, would possess entire equality with the large states, and it would certainly be no good ground for complaint that they should be accorded the right to impose taxes for other people to pay. This compensating power is found in that clause of the Constitution providing that all bills for raising revenue shall originate in the House of Representatives, reserving to the Senate the right to propose or concur with amendments as on other bills. Unless a substantial power was intended to be conferred by this clause, the contemporary construction put upon it by the Federalist, in a paper written either by Madison or Hamilton, was strikingly erroneous. "Admitting, however," says the author of this paper, "that they should all be insufficient to subdue the unjust policy of the smaller states, or their predominating influence in the councils of the Senate, a constitutional and infallible recourse still remains with the larger states by which they will be able at

all times to accomplish their just purposes. The House of Representatives can not only refuse, but they alone can propose the supplies requisite for the support of government. They, in a word, hold the purse,—that powerful instrument by which we behold, in the history of the British Constitution, an infant and humble representative of the people gradually enlarging the sphere of its activity and importance, and finally reducing, so far as it seems to have wished, all the overgrown prerogatives of the other branches of the government. This power of the purse may, in fact, be regarded as the most complete and effectual weapon with which any constitution can arm the immediate representatives of the people for obtaining a redress of every grievance, and for carrying into effect every just and salutary measure."

But what would this power amount to if the imposition of a tax upon a single article would confer upon the Senate the right to go over the whole range of taxes and construct any sort of a bill it desired? By giving such an interpretation to the meaning of the exception the great power itself is practically destroyed. At the time of the framing of the Constitution there was no such thing known as amendment by complete substitution, and the fair construction of that clause, having reference to the conditions surrounding its adoption, is that if the House should send a bill to the Senate imposing a tax upon an article, the Senate might amend by raising or diminishing the proposed tax as it saw fit. It was such an abuse of the right of amendment as to destroy the power to originate taxation laws, when the Senate, as it did in 1872, substituted for a House bill relating to a tax on coffee a general revision of the tariff. The Senate's action at that time called out a protest from Garfield, who had deeply studied this subject, and who contributed to it one of the

most notable efforts of his career in Congress. Garfield held that the action of the Senate in the case cited was an abuse, and that its action should be confined substantially to the subjects in the House bill. He declared that the action of the Senate invaded "a right which can not be surrendered without inflicting a fatal wound upon the integrity of our whole system of government." No hard and fast rule can be set up in such a case, but it is a question of prerogative, and each body should respect the constitutional prerogatives of the other. Surely the body representing the people should struggle for its own.

The great Senators have almost uniformly contended for a broad construction of the prerogative of the House. Webster held that it was purely a question of privilege, and that the decision of it belonged to the House. Benton, who belonged to the opposite political party, in the same debate declared that "in all cases of doubtful jurisdiction between the Houses my rule is to solve the doubt in favor of the House, which, by the Constitution, is charged with the general subject. Taxation and representation go together. The burdens of the people and the representation of the people are put together. An important and full representation of the people is in the House of Representatives." Sumner, Wilson, Seward, and Hoar have also declared in the Senate for a broad construction of the prerogative of the House.

It has been said that the Senate will construct a better tariff than the House. The framers of the Constitution, and especially its great interpreter, Hamilton, did not foresee in its full force the influence of special great interests in framing tariff laws. It is for the benefit of those interests, sometimes pressing for governmental protection and sometimes for governmental indifference, to have tariffs constructed by a few men responsible practically

to no great body of public opinion, as many of them as possible with small constituencies, so that after having protected the interests of those they particularly represent, they might be unattached and without special electoral responsibility. A scrutiny of the recent bills relating to taxation will show that the House bills have usually been drawn upon more popular lines. Take the repeal of some of the war revenue taxes two years ago, when the House of Representatives sent to the Senate a bill, the chief feature of which was the removal of nearly all the troublesome and vexatious stamp taxes which had been imposed upon almost all the instrumentalities of trade. The tax upon bank checks, insurance policies, real estate conveyances, and similar taxes of a wide application were removed by the House bill. The Senate, under the guise of its power to amend, struck out all after the enacting clause of the House bill, and substituted a measure of its own. The distinguishing feature of the Senate bill was an extension of the amount of the reduction of the tax on beer and tobacco by about twelve millions, and to enable this to be done, it retained many of the stamp taxes which the House bill removed, and especially the stamp tax upon checks. The tax upon checks was a direct tax upon hundreds of thousands of people, and was not of sufficient importance to any individual, vexatious though it might be, to lead him to make any special effort for its repeal. On the other hand, the millions which were remitted upon beer went to a very small class who had so much at stake as to warrant an extraordinary effort. The House repeal was in favor of the great number, and the Senate repeal was in favor of the few.

It does not require a close study of the tariff laws of the last twenty years to lead to the conclusion that, although special interests have fully as much considera-

tion shown them in the House of Representatives as they should have, yet the Senate has been the citadel of those interests. The representatives are reached directly by the people who pay the taxes and can be visited with public indignation, while the Senators in some instances at least are for all practical purposes irresponsible to the taxpayer.

The question primarily is not one of wise or unwise laws, or whether small states do not often have strong Senators, while large states have weak ones. It involves the principle of one set of men imposing taxes for another set of men to pay, and if the House of Representatives would insist, as some of its greatest members have advised, upon a broad and fair construction of its prerogatives, we should be upon a platform more consistent with the principles of sound government. We should, I am sure, have laws of taxation formulated upon more popular lines. The masses would suffer less for the benefit of the great special interests, and there would be some compensation to the large states, and to the people who are directly represented, for the extraordinary powers conferred upon the Senate.

By a sort of attraction of gravitation the great powers of the Senate increase by drawing other powers to them, and this species of expansion is especially seen in the tendency to confer special official functions upon the Senators individually. Take the negotiation of the treaty of peace with Spain in 1898, which was, in effect, a treaty of war rather than of peace, and which embarked us upon a policy nobody contemplated when we entered upon the war for the liberation of Cuba. Of the five commissioners who were appointed to negotiate that treaty, three were Senators. That is not an exceptional instance, but it is becoming the rule. A more recent illustration is found in

the appointment of the commission, soon to meet, to decide the Alaskan boundary dispute, a tribunal which, under the agreement, was to be composed of impartial jurists of repute. Two of the three American members of the commission were chosen from the Senate. We may concede to those two Senators the utmost their warmest friends could acclaim for them, and yet there is no danger in the assertion that there are plenty of other jurists in the country as impartial and of as high repute. If there were a paucity of American talent, or if the great part of it were concentrated in the Senate, then it might be desirable to fill such places, which, for all essential purposes, are offices, from the membership of the Senate. But there is certainly no such lack of talent in private life as to call for a duplication of parts in the play, or for imposing on Senators important public functions in addition to those belonging to their own office. Mr. Hay had not been conspicuous as a public man before the first election of Mr. McKinley. The public career of Mr. Richard Olney had been limited to a term in the Massachusetts legislature before he rendered his notable service in the Cabinet of President Cleveland. I think neither Mr. Gage nor Mr. Root nor yet Mr. Knox had ever held important public office before he entered President McKinley's Cabinet. Scores of instances can be found where men of little or no experience in the public service have been selected to fill the most important offices, and have infused new strength and energy into the government.

In a government which is a republic in anything but name the offices should be as widely distributed as is consistent with good administration, and the rich red blood which the country possesses in abundance should course through the channels of office. Even if the country were so poor in talent as to make it desirable to appoint Sena-

tors to such places, even if there were no impropriety in their negotiating treaties upon which they were to pass judgment as Senators, such appointments come perilously near being an infraction of the Constitution. A Senator is disqualified from holding any other office under the United States, and if it is not a most important office of government to determine in the first instance the great question of peace and war, or to settle a disputed boundary with another nation, then the term has an exceedingly narrow meaning.

The four years' term of the presidency is too short for a struggle with the Senate, and its part in executive transactions is so great that any such struggle would expose an administration to failure. The period of life of the House of Representatives is still shorter, and its term would be likely to come to an end before a contest between the two Houses would acquire any great momentum. The custom under which Representatives are expected to secure offices for their constituents, and thus to ask for senatorial favors, makes a contest between the two Houses less apt to occur. As I have said, an amendment to the Constitution depriving states of their equal membership in the Senate is not within the range of possibilities, as such an amendment would require the unanimous consent of all the states. It would be possible to pass an amendment in the ordinary way, reducing the powers of the Senate, but the friction of the amending machinery is so great that it would involve an intense and long continued pressure of public opinion to set it in motion. The only practical hope of even a partial remedy lies in the jealous insistence by the House upon its constitutional prerogatives. If it should do that, it would be more likely to realize the advantage of its position in a nation imbued with the democratic idea. The doubtful powers of government

would gravitate toward the House, our laws would become more popular in character, and would respond to broad and general needs in the community, while the character of the Senate as a conservative body would be impaired.

But things have drifted long enough. Nothing can be clearer than that in the long lapse of time institutions of government may be corrupted and become vastly different from their original character. Venice began her national career as a republic in fact, and for centuries was governed by elected rulers responsible to a popular assembly, but, while maintaining the name of republic, she came to have, in the Council of Ten, sitting in secret, or, as it might be called today, "in executive session," as despotic and cruel an oligarchy as ever existed. It might be said that we have the restraints of a written Constitution, and a Supreme Court to enforce them, but already we have heard made, not entirely without effect, that appeal to an utterly false national pride, "Is not the American government able to do anything that any other government can do?" as if that which has been accounted our glory, as if the restrictions in favor of freedom and against tyranny, even by the government itself, were a defect and a badge of weakness. And in view of the tendency of recent decisions, how long may we expect the Supreme Court to remain the austere guardian of the Constitution against the encroachments of executive or congressional power? That court may not always be composed of Marshalls and Storys and Harlans, and what will become of the limitations of the Constitution if ever the high aerie, about which the eagles of our jurisprudence once hovered, shall be held by the twittering judicial tomtit? At any rate, the preservation of our institutions in their purity requires that each branch of the political department of the government shall be the guardian of its own powers, and, without encroaching

upon any other branch, shall stand firmly for its own prerogatives. Any determined conflict will be settled, not by mere popular clamor, but by public opinion. Popular clamor is often stirred up by an ardent cultivation of the galleries, and the sensation of yesterday is thrust aside and forgotten for the sensation of today. But the settled and potent public opinion, which is the product of patient discussion, and of the persistent education of the people, usually leads to policies in quite an opposite direction. When that shall be appealed to in any determined contest between the two Houses, it can scarcely be doubted that the decision will be in favor of those great principles of popular government which underlie the American Commonwealth.

36. Stages of a Bill in Congress [1]

To the casual observer, the work of Congress is likely to be either amusing or confusing. But even though the rules are numerous and technical, one can gain a fair knowledge of how Congress works if one can visualize the various steps which must be taken in the passing of a law. William Tyler Page, the Clerk of the House of Representatives, has prepared the following non-technical account of the path of a bill through Congress.

INTRODUCED

The process followed when a measure is introduced in the House may be briefly described. The bill is first dropped, let us say, by Mr. X into a basket on the clerk's desk known as "The hopper." The Speaker's clerk goes through the batch of new bills, and assigns the X bill to the committee having jurisdiction. The bill is numbered and proper records are made of its introduction and the

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bill is sent to the Government Printing Office, where a number of copies of it are struck off. The copies are deposited in the Document Room of the House, where they are procurable by the members.

IN COMMITTEE

The committee considers the bill at one of its periodic meetings and decides either to report it in its original form or to report it with amendments. Sometimes extensive hearings on the bill are accorded its friends and opponents. Let us assume that the committee approves the X bill either with or without amendments. It is then reported to the House by the committee, with a recommendation that it be passed.

ON THE CALENDAR

The Clerk receives it and refers it and the report to the Calendar. If it is a public bill involving a charge of money or property, it is referred to the Calendar of the Committee of the Whole House on the State of the Union. If it is merely a public bill, it goes to the House Calendar, and if a private bill to the Private Calendar. More records of it are now made, and if it has been amended in committee, another batch of copies is printed, carrying the Calendar number and showing the proposed amendments.

TAKEN UP

Numerous are the ways provided by the House rules for taking up a bill, once it is on a Calendar, depending upon its nature, whether privileged or not. It may be taken up by unanimous consent, may be called up on Calendar Wednesday by direction of the committee reporting it, may be passed under suspension of the rules, may come

up on certain days if it is a private bill, or may take precedence over other bills if it is an appropriation or revenue bill. And if in the view of the Rules Committee the bill deserves prompt and special consideration that committee may bring in a rule for its immediate consideration and prescribe the terms under which it may be considered, overriding all rules save the rule for a motion to recommit.

DEBATED

Ordinarily the duration of the debate is determined by the importance of the measure. The discussion is generally opened by the chairman of the committee in charge, and unless a specified time has been set for debate, it is ended by a motion for the "previous question."

SENT TO THE SENATE

The X bill being passed, that fact is certified by the Clerk of the House, and the certified copy is carried by him to the Senate, where, after certain formalities, it is received by the Vice-President and by him referred to the Senate committee having jurisdiction of the subject matter. Here it undergoes another process of examination.

IN SENATE COMMITTEE

The Senate committee, in turn, is at liberty to shelve or "pigeonhole" it, to approve it as it stands, or to make amendments of its own. If approved or amended, the X bill is reported in due time to the Senate.

RETURNED TO HOUSE

If passed by that body, it is returned to the House. If the bill has been amended by the Senate and the House accepts the amendment, that ends the matter and the bill is

signed by the Speaker and the Vice-President and is presented by the Committee on Enrolled Bills to the President for his approval or rejection, as the case may be.

IN CONFERENCE

But if, on the other hand, the House disagrees to the Senate amendments, the Senate is so informed and if it still insists upon its amendments, each branch appoints representatives to a joint conference committee, which is charged with the duty of compromising the differences between the two bills. The committee nearly always reaches an agreement, and its report is almost invariably confirmed by the vote of the two branches.

EXCEPTIONS

This is an outline of the progress of an ordinary measure to final adoption. In the case of bills of major importance, as, for example, a general tariff bill, not only the House Ways and Means Committee, to which such legislation is confided, but the Senate Finance Committee, which exercises a corresponding function for the upper branch, holds public hearings for the discussion of the legislation in hand. It sometimes happens that the Senate and House committees are far apart in their final conclusions as to the details of grave measures, and in such cases a heavy responsibility is intrusted to the conference committee. More and more, in both Houses, the powers of conference committees are being curtailed.

POSTSCRIPT

The X bill has a happy fate, compared with the great mass of bills submitted. Much of the time of the committees is given to the rejection of bills, and the committee

rooms are, as has been intimated, the graveyards of a very heavy percentage of the Congress offerings. But once a bill escapes from the committee into the House it is disposed of with clock-like precision.

CHAPTER IX

THE POWERS OF CONGRESS

37. Implied Powers

In the case of McCulloch v. Maryland, the Supreme Court was called upon to decide whether Congress had the power to incorporate a bank and whether a state could tax such a bank. These points involving the power of Congress, however, are much less important than the doctrine of implied powers which is here skillfuly worked out. The opinion in this case which follows, was written by Chief Justice Marshall and has been referred to appropriately by Justice Lamar as "one of the chief ornaments of American jurisprudence."

Among the enumerated powers, we do not find that of establishing a bank or creating a corporation. But there is no phrase in the instrument which, like the articles of confederation, excludes incidental or implied powers; and which requires that everything granted shall be expressly and minutely described. Even the 10th amendment, which was framed for the purpose of quieting the excessive jealousies which had been excited, omits the word "expressly," and declares only that the powers "not delegated to the United States, nor prohibited to the States, are reserved to the States or to the people;" thus leaving the question, whether the particular power which may become the subject of contest, has been delegated to the one government, or prohibited to the other, to depend on a fair construction of the whole instrument. The men who drew and adopted this amendment had experienced

the embarrassments resulting from the insertion of this word in the articles of confederation, and probably omitted it to avoid those embarrassments. A constitution, to contain an accurate detail of all the subdivisions of which its great powers will admit, and of all the means by which they may be carried into execution, would partake of the prolixity of a legal code, and could scarcely be embraced by the human mind. It would probably never be understood by the public. Its nature, therefore, requires, that only its great outlines should be marked, its important objects designated, and the minor ingredients which compose those objects be deduced from the nature of the objects themselves. That this idea was entertained by the framers of the American constitution, is not only to be inferred from the nature of the instrument, but from the language. Why else were some of the limitations, found in the 9th section of the 1st article, introduced? It is also, in some degree, warranted by their having omitted to use any restrictive term which might prevent its receiving a fair and just interpretation. In considering this question, then, we must never forget, that it is a constitution we are expounding.

But the constitution of the United States has not left the right of congress to employ the necessary means, for the execution the powers conferred on the government, to general reasoning. To its enumeration of powers is added that of making "all laws which shall be necessary and proper, for carrying into execution the foregoing powers, and all powers vested by this constitution, in the government of the United States, or in any department thereof."

The counsel for the State of Maryland have urged various arguments to prove that this clause, though in terms a grant of power, is not so in effect; but is really restrictive of the general right, which might otherwise be

implied, of selecting means for executing the enumerated powers.

In support of this proposition, they have found it necessary to contend, that this clause was inserted for the purpose of conferring on congress the power of making laws. That, without it, doubts might be entertained whether congress could exercise its powers in the form of legislation.

But could this be the object for which it was inserted? A government is created by the people, having legislative, executive, and judicial powers. Its legislative powers are vested in a congress, which is to consist of a senate and house of representatives. Each house may determine the rule of its proceedings; and it is declared that every bill which shall have passed both houses, shall, before it becomes a law, be presented to the President of the United States. The 7th section describes the course of proceedings, by which a bill shall become a law; and, then, the 8th section enumerates the powers of congress. Could it be necessary to say, that a legislature should exercise legislative powers, in the shape of legislation? After allowing each house to prescribe its own course of proceeding, after describing the manner in which a bill should become a law, would it have entered into the mind of a single member of the convention, that an express power to make laws was necessary to enable the legislature to make them? That a legislature, endowed with legislative powers, can legislate, is a proposition too self-evident to have been questioned.

But the argument on which most reliance is placed is drawn from the peculiar language of this clause. Congress is not empowered by it to make all laws, which may have relation to the powers conferred on the government, but only such as may be "necessary and proper" for carry-

ing them into execution. The word "necessary" is considered as controlling the whole sentence, and as limiting the right to pass laws for the execution of the granted powers, to such as are indispensable, and without which the power would be nugatory. That it excludes the choice of means, and leaves to congress, in each case, that only which is most direct and simple.

Is it true that this is the sense in which the word "necessary" is always used? Does it always import an absolute physical necessity, so strong, that one thing, to which another may be termed necessary, cannot exist without that other? We think it does not. If reference be had to its use, in the common affairs of the world, or in approved authors, we find that it frequently imports no more than that one thing is convenient, or useful, or essential to another. To employ the means necessary to an end is generally understood as employing any means calculated to produce the end, and not as being confined to those single means, without which the end would be entirely unattainable. Such is the character of human language, that no word conveys to the mind, in all situations, one single definite idea; that nothing is more common than to use words in a figurative sense. Almost all compositions contain words, which, taken in their rigorous sense, would convey a meaning different from that which is obviously intended. It is essential to just construction that many words which import something excessive, should be understood in a more mitigated sense—in that sense which common usage justifies. The word "necessary" is of this description. It has not a fixed character peculiar to itself. It admits of all degrees of comparison; and is often connected with words, which increase or diminish the impression the mind receives of the urgency it imports. A thing may be necessary, very necessary,

absolutely or indispensably necessary. To no mind would the same idea be conveyed by these several phrases. This comment on the word is well illustrated, by the passage cited at the bar, from the 10th section of the 1st article of the constitution. It is, we think, impossible to compare the sentence which prohibits a State from laying "imposts, or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws," with that which authorizes congress "to make all laws which shall be necessary and proper for carrying into execution" the powers of the general government, without feeling a conviction that the convention understood itself to change materially the meaning of the word "necessary" by prefixing the word "absolutely." This word, then, like others, is used in various senses; and, in its construction, the subject, the context, the intention of the person using them, are all to be taken into view.

Let this be done in the case under consideration. The subject is the execution of those great powers on which the welfare of a nation essentially depends. It must have been the intention of those who gave these powers, to insure, as far as human prudence could insure, their beneficial execution. This could not be done by confiding the choice of means to such narrow limits as not to leave it in the power of Congress to adopt any which might be appropriate, and which were conducive to the end. This provision is made in a constitution intended to endure for ages to come, and, consequently, to be adapted to the various crises of human affairs. To have prescribed the means by which government should, in all future time, execute its powers, would have been to change, entirely, the character of the instrument, and give it the properties of a legal code. It would have been an unwise attempt to provide, by immutable rules, for exigencies, which,

if foreseen at all, must have been seen dimly, and which can be best provided for as they occur. To have declared that the best means shall not be used, but those alone without which the power given would be nugatory, would have been to deprive the legislature of the capacity to avail itself of experience, to exercise its reason, and to accomodate its legislation to circumstances. If we apply this principle of construction to any of the powers of the government, we shall find it so pernicious in its operation that we shall be compelled to discard it. The powers vested in congress may certainly be carried into execution, without prescribing an oath of office. The power to exact this security for the faithful performance of duty is not given, nor is it indispensably necessary. The different departments may be established; taxes may be imposed and collected; armies and navies may be raised and maintained; and money may be borrowed, without requiring an oath of office. It might be argued, with as much plausibility, as other incidental powers have been assailed, that the convention was not unmindful of this subject. The oath which might be exacted—that of fidelity to the constitution—is prescribed, and no other can be required. Yet, he would be charged with insanity who should contend that the legislature might not superadd to the oath directed by the constitution, such other oath of office as its wisdom might suggest.

So, with respect to the whole penal code of the United States. Whence arises the power to punish in cases not prescribed by the constitution? All admit that the government may, legitimately, punish any violation of its laws; and yet this is not among the enumerated powers of congress. The right to enforce the observance of law, by punishing its infraction, might be denied with the more plausibility, because it is expressly given in some cases.

Congress is empowered "to provide for the punishment of counterfeiting the securities and current coin of the United States," and "to define and punish piracies and felonies committed on the high seas, and offenses against the law of nations." The several powers of Congress may exist, in a very imperfect state to be sure, but they may exist and be carried into execution, although no punishment should be inflicted in cases where the right to punish is not expressly given.

Take, for example, the power "to establish post-offices and post-roads." This power is executed by the single act of making the establishment. But from this has been inferred the power and duty of carrying the mail along the post-road, from one post-office to another. And, from this implied power, has again been inferred the right to punish those who steal letters from the post-office, or rob the mail. It may be said, with some plausibility, that the right to carry the mail, and to punish those who rob it, is not indispensably necessary to the establishment of a post-office and post-road. This right is, indeed, essential to the beneficial exercise of the power, but not indispensably necessary to its existence. So, of the punishment of the crimes of stealing or falsifying a record or process of a court of the United States, or of perjury in such court. To punish these offenses is certainly conducive to the due administration of justice. But courts may exist, and may decide the cases brought before them, though such crimes escape punishment.

The baneful influence of this narrow construction on all the operations of the government, and the absolute impracticability of maintaining it without rendering the government incompetent to its great objects, might be illustrated by numerous examples drawn from the constitution and from our laws. The good sense of the pub-

lic has pronounced, without hesitation, that the power of punishment appertains to sovereignty, and may be exercised whenever the sovereign has a right to act, as incidental to his constitutional powers. It is a means for carrying into execution all sovereign powers, and may be used, although not indispensably necessary. It is a right incidental to the power, and conducive to its beneficial exercise.

If this limited construction of the word "necessary" must be abandoned in order to punish, whence is derived the rule which would reinstate it, when the government would carry its powers into execution by means not vindictive in their nature? If the word "necessary" means "needful," "requisite," "essential," "conducive to," in order to let in the power of punishment for the infraction of law, why is it not equally comprehensive when required to authorize the use of means which facilitate the execution of the powers of government without the infliction of punishment?

In ascertaining the sense in which the word "necessary" is used in this clause of the constitution, we may derive some aid from that with which it is associated. Congress shall have power "to make all laws which shall be necessary and proper to carry into execution" the powers of the government. If the word "necessary" was used in that strict and rigorous sense for which the counsel for the State of Maryland contend, it would be an extraordinary departure from the usual course of the human mind, as exhibited in composition, to add a word, the only possible effect of which is to qualify that strict and rigorous meaning; to present to the mind the idea of some choice of means of legislation not straitened and compressed within the narrow limits for which gentlemen contend.

But the argument which most conclusively demonstrates the error of the construction contended for by the counsel for the State of Maryland, is founded on the intention of the convention, as manifested in the whole clause. To waste time and argument in proving that, without it, Congress might carry its powers into execution, would be not much less idle than to hold a lighted taper to the sun. As little can be required to prove, that in the absence of this clause, Congress would have some choice of means. That it might employ those which, in its judgment, would most advantageously effect the object to be accomplished. That any means adapted to the end, any means which tended directly to the execution of the constitutional powers of the government, were in themselves constitutional. This clause, as construed by the State of Maryland, would abridge and almost annihilate this useful and necessary right of the legislature to select its means. That this could not be intended, is, we should think, had it not been already controverted, too apparent for controversy. We think so for the following reasons:—

1. The clause is placed among the powers of Congress, not among the limitations on those powers.

2. Its terms purport to enlarge, not to diminish the powers vested in the government. It purports to be an additional power, not a restriction on those already granted. No reason has been or can be assigned for thus concealing an intention to narrow the discretion of the national legislature, under words which purport to enlarge it. The framers of the constitution wished its adoption, and well knew that it would be endangered by its strength, not by its weakness. Had they been capable of using language which would convey to the eye one idea, and after deep reflection, impress on the mind another, they would rather have disguised the grant of power, than

its limitation. If then, their intention had been, by this clause, to restrain the free use of means which might otherwise have been implied, that intention would have been inserted in another place, and would have been expressed in terms resembling these: "In carrying into execution the foregoing powers, and all others," etc., "no laws shall be passed but such as are necessary and proper." Had the intention been to make this clause restrictive, it would unquestionably have been so in form as well as in effect.

The result of the most careful and attentive consideration bestowed upon this clause is, that if it does not enlarge, it cannot be construed to restrain the powers of Congress, or to impair the right of the legislature to exercise its best judgment in the selection of measures, to carry into execution the constitutional powers of the government. If no other motive for its insertion can be suggested, a sufficient one is found in the desire to remove all doubts respecting the right to legislate on that vast mass of incidental powers which must be involved in the constitution, if that instrument be not a splendid bauble.

We admit, as all must admit, that the powers of the government are limited, and that its limits are not to be transcended. But we think the sound construction of the constitution must allow to the national legislature that discretion, with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it, in the manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consistent with the letter and spirit of the constitution, are constitutional.

38. The National Budget System *

The adoption of a budget system by Congress in 1921 was one of the greatest steps toward efficient government ever taken in the United States. The new plan for handling government finance was put into operation under the able direction of General Charles G. Dawes, and since his resignation, the work has been carried on by General H. M. Lord, who had previously served as Chief Finance Officer of the United States Army and also as Clerk of the Ways and Means Committee of the House of Representatives. The speech given below was delivered by General Lord before the Second Annual meeting of the business organization of the federal government—a significant innovation under the budget system—on July 11, 1922. It is an admirable comparison of the old finance methods with the new.

June 10, 1921, the President approved an act of Congress which gave the United States Government a budgetary system. December 5, 1921, the President submitted to Congress the first Budget under this act.

This, however, was not the first real budget submitted to an American Congress. January 5, 1790, Alexander Hamilton, the then Secretary of the Treasury, submitted to Congress a complete actual budget—a detailed statement of expected income and proposed expenditure for that fiscal and calendar year. There were also in this budget statements covering the condition of the Treasury and recommendations for the raising of additional funds which would be necessary if the program of expenditure were approved by Congress. This budget of 1790 was enacted into law as one complete measure carrying all of the appropriations of the Government. This simple business procedure was continued until 1794, when a process of decentralization began. Some of the fundamental budgetary features were continued for 30 years, but the process of decentralization continued until the budget law of 1921

went into effect, when, instead of one appropriation bill covering the Government's activities, there were 14 independent bills considered by 8 independent committees.

Under this unfortunate decentralization of the Government's estimating and appropriating activities there was necessarily a lack of coördination in our Government's finances and its financial operations, which finally compelled the adoption of a system which in its fundamentals approximates the system instituted by Alexander Hamilton 132 years ago.

To get a proper conception of the problem that faced the administrators of the Budget and accounting act, it is necessary to discuss in some detail the procedures that obtained under the decentralized system of estimating, appropriating, and expending prior to the fiscal year 1922.

With the beginning of each fiscal year the work of preparing estimates for funds for the year which began 12 months later engaged the attention of departmental officials who were charged with this work. These great departments of the Government comprise within themselves many and varied activities. For the purposes of administration they are organized into divisions, branches, sections, and subsections. At the head of these divisions and branches were officials who had the definite conviction that the one urgent need of the hour was to secure sufficient funds to permit their activities to function to the fullest extent, without regard to the needs of other departments of the Government or the condition of the Treasury. While there were shining exceptions, in most instances the estimates as finally submitted to the head of the department reflected the collective opinion of various subordinates in the department interested almost exclusively in their own activities. I am not criticizing these faithful, able, and devoted Government officials be-

cause they are interested in the governmental activity with which they are connected. If they are not interested in their own special tasks, they are very indifferent Government servants and should be separated from the service. Their initiative and pride of accomplishment and sense of the dignity of their jobs should be controlled and directed, not eliminated, but until the establishment of the Bureau of the Budget there seemed to be no agency of direction or control. Congress recognized this condition of affairs, and in 1913 attempted to remedy it by enacting a law providing for the selection by the head of each department or independent establishment of an official charged with the duty of supervising the classification and compilation of estimates, but this law failed to accomplish in the measure expected the purpose for which it was enacted. There were, however, honest and intelligent attempts to study, classify, and modify the estimates, but it was rather expected that the estimating agencies would ask for all they thought they could get, and it was thought in many cases bureaus asked for more than they needed in order to allow for congressional reduction. As a result of this lack of systematic, scientific, and intelligent study, the estimates have very generally been much greater than the appropriations. From 1890 to 1922 the estimates submitted to Congress by the various spending agencies of the Government were $23,000,000,000 in excess of the amounts appropriated. In all these years Congress has been the only barrier between the Treasury and trouble.

These estimates from the various departments and bureaus, prepared in this unscientific way, were forwarded to the Secretary of the Treasury, who gathered them in a so-called Book of Estimates and, without further consideration, submitted them to Congress, which was all that

he was expected to do and all that he could do under the authority given him; so that whatever may have been accomplished in the departments in the way of study and analysis of the estimates, there was absolutely no comparison of the estimates from one department with the estimates from the other departments, for the purpose of eliminating duplication of effort and consequent expenditure, and again there was no comparison of the estimates of proposed expenditure with probable revenues for the period for which the estimates were prepared with a view to the modification of such estimates and their adjustment to Treasury conditions.

These estimates, carrying various expensive schemes and costly experiments, swollen beyond reason in the endeavor to give Congress something to cut—these estimates brought together in the Book of Estimates—a collection, in many cases, of guesses without proper study, without comparison, with little or no pruning, compiled without regard for the condition of the Treasury, without consideration of the taxpayer and his troubles, without fitting into or having much of any relation to any definite Government policy, were dumped upon a suffering Congress, which then proceeded at great expense of time and labor to hold extended hearings, study the estimates in detail and make reductions apparently warranted.

As there had been no coördination between the estimating agencies in the executive bureaus, so because of the decentralized organization of the appropriation agencies of Congress there could be little or no coördination in the appropriating of funds.

As there was little coördination of estimating and little or no coördination of appropriating, so there was little or no coördination of expending. In process of time these estimates came out of Congress more or less battered and

shot to pieces in the shape of appropriations and took their places on the statute books and the departments began an era of uncoördinated expenditure. During all of this faulty process these bills had not been permitted to cultivate any sort of real acquaintance with the Treasury; the appropriations were made, spending departments had their check books ready, and the Treasury must find the money no matter how great the amount. There was too seldom a definite fixed policy and too often little or no control in the Government departments of obligations and expenditures.

The law did, however, compel the submission of expenditure vouchers to the accounting officers of the Treasury for audit, but that audit was made after the obligations had been incurred and the expenditures made, and was limited to ascertaining whether or not the obligations had been incurred and the disbursements made in accordance with the law, whereas millions can be and have been wasted illegally. If a disbursing officer paid for a pair of shoestrings from the wrong appropriation, the error was invariably detected, reported, and corrected; but if an unnecessary purchase involving millions of dollars was effected or ten times too much paid for an article, and settlement therefor made from the proper appropriation, neither the unnecessary expenditure of millions nor the extravagant, improvident price paid for the article called for action of any sort.

It is almost incomprehensible that those charged with the administration of governmental affairs should have allowed this lamentable condition of things to continue for so long. The reason probably is that what is everybody's business is nobody's business, and we were so wealthy that notwithstanding the defects of our obsolete financial system we generally ended the year with a balance on the

right side of the ledger; then, too, in those palmy days we knew nothing of real taxation; but the World War changed all that. Inadequate and inefficient procedures and methods are deplorable when the amounts involved are confined to millions, but when millions swell into billions, failure to revise and correct such methods would be disastrous and indefensible.

In summarizing, as I have done, the condition which existed prior to the commencement of operations under the Budget and accounting act my sole intent has been to make plain the revolution which has taken place in the business of the Government since the enactment of this legislation. A little more than one year ago a new era was inaugurated; the President for the first time in the history of this country took his logical place as the head of the business organization of government and assumed all of the great responsibilities devolving upon this direct leadership. Through the machinery provided for him scientific methods were inaugurated in the estimating of funds and the expenditure thereof and coördination was established in the routine business organization. This has required Executive pressure, which must be maintained if from the admirable foundation already laid we are to continue the policies of greater economy and efficiency and carry them through until full and complete results have been achieved.

The Budget and accounting act is not itself a magic wand that waves out all these faulty procedures and beckons in the financial millennium. Habits, customs, regulations, laws that the passage of a hundred years or more has built into the very machinery of the Government are not eradicated over night. The most flagrant faults will be corrected first, but it must be a continuing process that will require years of patient, persistent, and

courageous endeavor, with the unwavering, vigorous support of the Executive.

Under the new procedure instead of the many estimating agencies within the various departments and bureaus there is required by the Budget law the appointment of a Budget officer by the head of each department and independent establishment of the Government, who is charged with the preparation of all estimates. The creation of these Budget officers was considered of primary importance by those who were particularly responsible for the enacting of the Budget legislation, and the spirit of the act can not be fully carried out unless the men filling these important positions are officials of sterling ability, of standing in their branches, and are given an absolutely independent status as far as Budget operations are concerned. The Budget officer is the fiscal officer of his department. In matters pertaining to the Budget he must be subordinate to the head of his department alone, and should report to him directly.

We must not, however, overlook the fact that there were occasional John the Baptists crying in the wilderness of faulty Government procedure and calling attention to a new and more excellent and effective way of doing these important things. President Taft, during his occupancy of the White House, succeeded in getting an appropriation from a reluctant Congress to make a study of Government organization with a view to establishing more efficient and economical procedures. He established a Commission on Economy and Efficiency which submitted a careful and informative report to Congress and recommended the installation of a budgetary system in our Government. Congress pigeonholed the report and abolished the commission, but the money and effort involved in this attempt to remedy the flagrant condition of the

Government's financial operations were not entirely unproductive, for out of that attempt was developed a strong sentiment among the people and the business organizations of the country in favor of a budgetary system for the Government.

The estimates, prepared by the Budget officers and approved by the department heads, are submitted to the Bureau of the Budget, where they are given microscopic examination and analysis by special investigators familiar with the organization and operations of the various agencies of the Government, acquainted with their functions and their mission, and who know what the bureaus have been doing with their appropriations. Here the estimates of one department are compared with the estimates of other departments, duplications eliminated, and reductions and modifications made so as to fit them into the approved administrative policy. These estimates are also studied with an eye upon the condition of the Treasury of the United States and tax conditions.

This carefully prepared estimate is then submitted by the President to Congress for action with a statement of expenditures for the last prior year for which a complete report is available and estimated expenditures for the current year. The estimates are also accompanied by statements showing the condition of the country's finances and expected receipts, and if funds over and above the yield from established sources of revenue are needed the law requires that the President shall recommend what steps in his opinion should be taken to provide such revenue.

As a result of the enactment of the Budget law a great revolution has taken place in the organization of the House and Senate along appropriating lines. Today all appropriations of the Government are made on bills re-

ported to Congress from one committee, the Appropriations Committee of the House, and the Appropriations Committee of the Senate. This arrangement affords opportunity for comparing the estimates of one bureau with those of another, and permits consideration of the country's needs as one complete study by one committee acting for the House and for the Senate.

Under the operation of the Budget law the annual appropriations for each department now all appear in one act, and it is not necessary in order to find how much money is available for a department or agency to search through several different appropriation acts for that information. This is certainly a long step in advance along the road of adequate governmental financial procedure.

The Budget and accounting act provides for a General Accounting Office with a Comptroller General at its head. This office is charged with the duty of auditing all disbursements of public money and the settlement of claims not paid by disbursing officers. It is not only to prescribe the forms of keeping and rendering public accounts but is charged with devising the forms and procedures of administrative accounting in all branches of the service.

Heretofore each department and establishment of the Government has devised and installed such methods of keeping its accounts as it found necessary or desirable. There has been no uniformity, with the result that there could be no satisfactory report of the receipts and expenditures of the Government as a whole. Financial statements were made in scores of annual and special reports from departments, bureaus, and other organizations, or by individual officers. Under the direction of the Comptroller General these conditions will soon change, and we shall have a complete picture of the Government's

financial operations with a statement of audited receipts and expenditures soon after the close of each fiscal year.

The General Accounting Office and the Bureau of the Budget collaborated in the preparation of a system of uniform classification of objects of expenditure, which was put into effect July 1, and applies to every activity of the Government. This is the first step toward a uniform accounting system so necessary from the standpoint of economy and efficiency.

The General Accounting Office is an important part of the Budget and accounting machinery, and is independent of the executive departments. The tenure of office of the Comptroller General is such as to enable him to speak fearlessly and frankly. The information given by him to Congress and the public with reference to the receipt, disbursement, and application of public funds will be an important aid in improving conditions.

In his address before the first semi-annual meeting of the business organization of the Government General Dawes said: "The Bureau of the Budget must be impartial, impersonal, and non-political," and of the many admirable statements made by him there is none more important and timely. The Budget movement in its inception, both in the country and in Congress, was absolutely non-political. The proposal for the establishment of a national Budget system was advocated by chambers of commerce and other commercial bodies and trade associations throughout the country regardless of political or geographical division. It was favored by both President Taft and President Wilson, and received indorsement in the platforms of all political parties. When the Budget proposal was before Congress experienced leaders of both parties served on the select Budget committees of the House and Senate, and in the preparation of the bill party

lines were completely obliterated. The measure was advocated with equal enthusiasm on the floor of the House and the Senate by Democrats and Republicans, and it passed the Senate without a dissenting vote, while only three votes were recorded against it in the House. No other conception of the Budget Bureau than that of a non-political, impersonal agency is proper, and any attempt to construe its purposes otherwise than for the general good of the country irrespective of party would be most unfortunate and disastrous, and seriously hamper its legitimate activities.

39. Commerce Power *

This is considered by many persons to be Marshall's most famous opinion. It established the supremacy of the national government in the field of interstate and foreign commerce, and thus made possible the expansion of the commerce power, which has taken place since that time. The decision resulted in liberating American commerce from various state restrictions and monopolies. Following the decision of this case, the whole tendency has been to narrow the sphere of state control over commerce and to expand the national power. Some of the most important national regulatory statutes are based on the commerce power.

As preliminary to the very able discussions of the Constitution which we have heard from the bar, and as having some influence on its construction, reference has been made to the political situation of these states, anterior to its formation. It has been said that they were sovereign, were completely independent, and were connected with each other only by a league. This is true. But, when these allied sovereigns converted their league into a government, when they converted their congress of ambassadors, deputed to deliberate on their common concerns,

and to recommend measures of general utility, into a legislature, empowered to enact laws on the most interesting subjects, the whole character in which the states appear underwent a change, the extent of which must be determined by a fair consideration of the instrument by which that change was effected.

This instrument contains an enumeration of powers expressly granted by the people to their government. It has been said that these powers ought to be construed strictly. But why ought they to be so construed? Is there one sentence in the Constitution which gives countenance to this rule? In the last of the enumerated powers, that which grants, expressly, the means for carrying all others into execution, Congress is authorized "to make all laws which shall be necessary and proper" for the purpose. But this limitation on the means which may be used is not extended to the powers which are conferred; nor is there one sentence in the Constitution, which has been pointed out by the gentlemen of the bar, or which we have been able to discern, that prescribes this rule. We do not, therefore, think ourselves justified in adopting it. What do gentlemen mean by a strict construction? If they contend only against that enlarged construction, which would extend words beyond their natural and obvious import, we might question the application of the term, but should not controvert the principle. If they contend for that narrow construction which, in support of some theory not to be found in the Constitution, would deny to the government those powers which the words of the grant, as usually understood, import, and which are consistent with the general views and objects of the instrument; for that narrow construction, which would cripple the government, and render it unequal to the objects for which it is declared to be instituted, and to which

the powers given, as fairly understood, render it competent; then we cannot perceive the propriety of this strict construction, nor adopt it as the rule by which the Constitution is to be expounded. As men whose intentions require no concealment generally employ the words which most indirectly and aptly express the ideas they intend to convey, the enlightened patriots who framed our Constitution, and the people who adopted it, must be understood to have employed words in their natural sense, and to have intended what they have said. If, from the imperfection of human language, there should be serious doubts respecting the extent of any given power, it is a well settled rule that the objects for which it was given, especially when those objects are expressed in the instrument itself, should have great influence in the construction. We know of no reason for excluding this rule from the present case. The grant does not convey power which might be beneficial to the grantor, if retained by himself, or which can enure solely to the benefit of the grantee; but is an investment of power for the general advantage, in the hands of agents selected for that purpose; which power can never be exercised by the people themselves, but must be placed in the hands of agents, or lie dormant. We know of no rule for construing the extent of such powers, other than is given by the language of the instrument which confers them, taken in connection with the purposes for which they were conferred.

The words are: "Congress shall have power to regulate commerce with foreign nations, and among the several States, and with the Indian tribes." The subject to be regulated is commerce; and our Constitution being, as was aptly said at the bar, one of enumeration and not of definition, to ascertain the extent of the power, it becomes necessary to settle the meaning of the word. The

counsel for the appellee would limit it to traffic, to buying and selling, or the interchange of commodities, and do not admit that it comprehends navigation. This would restrict a general term, applicable to many objects, to one of its significations. Commerce, undoubtedly, is traffic, but it is something more; it is intercourse. It describes the commercial intercourse between nations, and parts of nations, in all its branches, and is regulated by prescribing rules for carrying on that intercourse. The mind can scarcely conceive a system for regulating commerce between nations which shall exclude all laws concerning navigation, which shall be silent on the admission of the vessels of the one nation into the ports of the other, and be confined to prescribing rules for the conduct of individuals, in the actual employment of buying and selling, or of barter.

If commerce does not include navigation, the government of the Union has no direct power over that subject, and can make no law prescribing what shall constitute American vessels, or requiring that they shall be navigated by American seamen. Yet this power has been exercised from the commencement of the government, has been exercised with the consent of all, and has been understood by all to be a commercial regulation. All America understands, and has uniformly understood, the word "commerce" to comprehend navigation. It was so understood, and must have been so understood, when the Constitution was framed. The power over commerce, including navigation, was one of the primary objects for which the people of America adopted their government, and must have been contemplated in forming it. The Convention must have used the word in that sense, because all have understood it in that sense; and the attempt to restrict it comes too late.

The word used in the Constitution, then, comprehends, and has been always understood to comprehend, navigation within its meaning; and a power to regulate navigation is as expressly granted as if that term had been added to the word "commerce."

To what commerce does this power extend? The Constitution informs us, to commerce "with foreign nations, and among the several States, and with the Indian tribes." It has, we believe, been universally admitted that these words comprehend every species of commercial intercourse between the United States and foreign nations. No sort of trade can be carried on between this country and any other to which this power does not extend. It has been truly said that commerce, as the word is used in the Constitution, is a unit, every part of which is indicated by the term. If this be the admitted meaning of the word, in its application to foreign nations, it must carry the same meaning throughout the sentence, and remain a unit, unless there be some plain intelligible cause which alters it.

The subject to which the power is next applied is to commerce "among the several States." The word "among" means intermingled with. A thing which is among others is intermingled with them. Commerce among the states cannot stop at the external boundary line of each state, but may be introduced into the interior.

It is not intended to say that these words comprehend that commerce which is completely internal, which is carried on between man and man in a state, or between different parts of the same state, and which does not extend to or affect other states. Such a power would be inconvenient and is certainly unnecessary.

Comprehensive as the word "among" is, it may very properly be restricted to that commerce which concerns

more states than one. The completely internal commerce of a state, then, may be considered as reserved for the state itself.

But, in regulating commerce with foreign nations, the power of Congress does not stop at the jurisdictional lines of the several states. It would be a very useless power if it could not pass those lines. The commerce of the United States with foreign nations is that of the whole United States. Every district has a right to participate in it. The deep streams which penetrate our country in every direction pass through the interior of almost every state in the Union, and furnish the means of exercising this right. If Congress has the power to regulate it, that power must be exercised whenever the subject exists. If it exists within the states, if a foreign voyage may commence or terminate at a port within a state, then the power of Congress may be exercised within a state.

This principle is, if possible, still more clear when applied to commerce "among the several States." They either join each other, in which case they are separated by a mathematical line, or they are remote from each other, in which case other states lie between them. What is commerce "among" them; and how is it to be conducted? Can a trading expedition between two adjoining states commence and terminate outside of each? And if the trading intercourse be between two states remote from each other, must it not commence in one, terminate in the other, and probably pass through a third? Commerce among the states must, of necessity, be commerce with the states. In the regulation of trade with the Indian tribes, the action of the law, especially when the Constitution was made, was chiefly within a state. The power of Congress, then, whatever it may be, must be

exercised within the territorial jurisdiction of the several states.

We are now arrived at the inquiry, what is this power?

It is the power to regulate; that is, to prescribe the rule by which commerce is to be governed. This power, like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the Constitution. These are expressed in plain terms, and do not affect the questions which arise in this case, or which have been discussed at the bar.

The power of Congress, then, comprehends navigation within the limits of every state in the Union, so far as that navigation may be, in any manner, connected with "commerce with foreign nations, or among the several States, or with the Indian tribes." It may, of consequence, pass the jurisdictional line of New York and act upon the very waters to which the prohibition now under consideration applies.

40. Police Power

Each one of the forty-eight American states possesses what is called the police power, or the power to protect the public health, morals, safety or general welfare of the people. In the exercise of this power the states have enacted a large body of social and economic legislation to meet present-day conditions. Such legislation has been held to be subject to the due process clause of the federal constitution, thus necessitating a review by the Supreme Court of a considerable number of cases which involve the exercise of the police power. The Supreme Court takes the view in cases involving the police power that no state law which is arbitrary and unreasonable is constitutional, but what is arbitrary and unreasonable must depend upon the opinion of the tribunal deciding the case. The dissenting opinion in the Lochner case which is given here, was written by Justice Holmes and is a classic statement of the liberal judicial

attitude toward social and economic legislation. The attitude of Holmes in this case became the attitude of the court in several cases which succeeded it, but in 1923 an important case was decided which goes counter to the Holmes doctrine. The Lochner case involved the validity of a New York law regulating the hours of work in bakeries.

I regret sincerely that I am unable to agree with the judgment in this case, and that I think it my duty to express my dissent.

This case is decided upon an economic theory which a large part of the country does not entertain. If it were a question whether I agreed with that theory, I should desire to study it further and long before making up my mind. But I do not conceive that to be my duty, because I strongly believe that my agreement or disagreement has nothing to do with the right of a majority to embody their opinions in law. It is settled by various decisions of this court that state constitutions and state laws may regulate life in many ways which we as legislators might think are injudicious, or if you like as tyrannical, as this, and which, equally with this, interfere with the liberty of contract. Sunday laws and usury laws are ancient examples. A more modern one is the prohibition of lotteries. The liberty of the citizen to do as he likes so long as he does not interfere with the liberty of others to do the same, which has been a shibboleth for some well-known writers, is interfered with by school law, by the Post-office, by every state or municipal institution which takes his money for purposes thought desirable, whether he likes it or not. The 14th Amendment does not enact Mr. Herbert Spencer's Social Statics. The other day we sustained the Massachusetts vaccination law. United States and state statutes and decisions cutting down the liberty to contract by way of combination are familiar to this court.

Two years ago we upheld the prohibition of sales of stock on margins, or for future delivery, in the Constitution of California. The decision sustaining an eight-hour law for miners is still recent. Some of these laws embody convictions or prejudices which judges are likely to share. Some may not. But a Constitution is not intended to embody a particular economic theory, whether of paternalism and the organic relation of the citizen to the state or of *laissez faire*. It is made for people of fundamentally different views, and the accident of our finding certain opinions natural and familiar, or novel, and even shocking, ought not to conclude our judgment upon the question whether statutes embodying them conflict with the Constitution of the United States.

General propositions do not decide concrete cases. The decision will depend on a judgment or intuition more subtle than any articulate major premise. But I think that the proposition just stated, if it is accepted, will carry us far toward the end. Every opinion tends to become a law. I think that the word "liberty," in the 14th Amendment, is perverted when it is held to prevent the natural outcome of a dominant opinion, unless it can be said that a rational and fair man necessarily would admit that the statute proposed would infringe fundamental principles as they have been understood by the traditions of our people and our law. It does not need research to show that no such sweeping condemnation can be passed upon the statute before us. A reasonable man might think it a proper measure on the score of health. Men whom I certainly would not pronounce unreasonable would uphold it as a first installment of a general regulation of the hours of work. Whether in the latter aspect it would be open to the charge of inequality I think it unnecessary to discuss.

CHAPTER X

THE JUDICIARY

41. Power of the Courts to Pass on the Constitutionality of Legislation *

One of the most celebrated opinions ever written by a Chief Justice appeared in the case of Marbury v. Madison from which this extract is taken. John Marshall who wrote the opinion is the Supreme Court's greatest Chief Justice and his exposition of the doctrine of judicial review in this case stands today as the classic statement of the Court's power in this regard.

The question whether an act repugnant to the constitution can become the law of the land, is a question deeply interesting to the United States; but, happily, not of an intricacy proportioned to its interest. It seems only necessary to recognize certain principles supposed to have been long and well established, to decide it.

That the people have an original right to establish, for their future government, such principles as, in their opinion, shall most conduce to their own happiness, is the basis on which the whole American fabric has been erected. The exercise of this original right is a very great exertion; nor can it nor ought it to be frequently repeated. The principles, therefore, so established, are deemed fundamental. And as the authority from which they proceed is supreme, and can seldom act, they are designed to be permanent.

This original and supreme will organizes the government, and assigns to different departments their respec-

tive powers. It may either stop here, or establish certain limits not to be transcended by those departments.

The government of the United States is of the latter description. The powers of the legislature are defined and limited; and that those limits may not be mistaken, or forgotten, the constitution is written. To what purpose are powers limited, and to what purpose is that limitation committed to writing, if these limits may, at any time, be passed by those intended to be restrained? The distinction between a government with limited and unlimited powers is abolished, if those limits do not confine the persons on whom they are imposed, and if acts prohibited and acts allowed are of equal obligation. It is a proposition too plain to be contested, that the constitution controls any legislative act repugnant to it; or, that the legislature may alter the constitution by an ordinary act.

Between these alternatives there is no middle ground. The constitution is either a superior paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and, like other acts, is alterable when the legislature shall please to alter it.

If the former part of the alternative be true, then a legislative act contrary to the constitution is not law; if the latter part be true, then written constitutions are absurd attempts, on the part of the people, to limit a power in its own nature illimitable.

Certainly all those who have framed written constitutions contemplate them as forming the fundamental and paramount law of the nation, and, consequently, the theory of every such government must be, that an act of the legislature, repugnant to the constitution, is void.

This theory is essentially attached to a written constitution, and is consequently to be considered, by this court, as one of the fundamental principles of our society. It is

not, therefore, to be lost sight of in the further consideration of this subject.

If an act of the legislature, repugnant to the constitution, is void, does it, notwithstanding its invalidity, bind the courts, and oblige them to give it effect? Or, in other words, though it be not law, does it constitute a rule as operative as if it were a law? This would be to overthrow in fact what was established in theory; and would seem, at first view, an absurdity too gross to be insisted on. It shall, however, receive a more attentive consideration.

It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule. If two laws conflict with each other, the courts must decide on the operation of each.

So if a law be in opposition to the constitution; if both the law and the constitution apply to a particular case, so that the court must either decide that case conformably to the law, disregarding the constitution, or conformably to the constitution, disregarding the law, the court must determine which of these conflicting rules governs the case. This is of the very essence of judicial duty.

If, then, the courts are to regard the constitution, and the constitution is superior to any ordinary act of the legislature, the constitution, and not such ordinary act, must govern the case to which they both apply.

Those, then, who controvert the principle that the constitution is to be considered, in court, as a paramount law, are reduced to the necessity of maintaining that courts must close their eyes on the constitution, and see only the law.

This doctrine would subvert the very foundation of all written constitutions. It would declare that an act which, according to the principles and theory of our government,

is entirely void, is yet, in practice, completely obligatory. It would declare that if the legislature shall do what is expressly forbidden, such act, notwithstanding the express prohibition, is in reality effectual. It would be giving to the legislature a practical and real omnipotence, with the same breath which professes to restrict their powers within narrow limits. It is prescribing limits, and declaring that those limits may be passed at pleasure.

That it thus reduces to nothing what we have deemed the greatest improvement on political institutions, a written constitution, would of itself be sufficient, in America, where written constitutions have been viewed with so much reverence, for rejecting the construction. But the peculiar expressions of the constitution of the United States furnish additional arguments in favor of its rejection.

The judicial power of the United States is extended to all cases arising under the constitution.

Could it be the intention of those who gave this power, to say that in using it the constitution should not be looked into? That a case arising under the constitution should be decided without examining the instrument under which it arises?

This is too extravagant to be maintained.

In some cases, then, the constitution must be looked into by the judges. And if they can open it at all, what part of it are they forbidden to read or to obey?

There are many other parts of the constitution which serve to illustrate this subject.

It is declared that "no tax or duty shall be laid on articles exported from any State." Suppose a duty on the export of cotton, of tobacco, or of flour; and a suit instituted to recover it. Ought judgment to be rendered

in such a case? Ought the judges to close their eyes on the constitution, and only see the law?

The constitution declares "that no bill of attainder or *ex post facto* law shall be passed."

If, however, such a bill should be passed, and a person should be prosecuted under it, must the court condemn to death those victims whom the constitution endeavors to preserve?

"No person," says the constitution, "shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court."

Here the language of the constitution is addressed especially to the courts. It prescribes, directly for them, a rule of evidence not to be departed from. If the legislature should change that rule, and declare one witness, or a confession out of court, sufficient for conviction, must the constitutional principle yield to the legislative act?

From these, and many other selections which might be made, it is apparent that the framers of the constitution contemplated that instrument as a rule for the government of courts, as well as of the legislature.

Why otherwise does it direct the judges to take an oath to support it? This oath certainly applies in an especial manner to their conduct in their official character. How immoral to impose it on them, if they were to be used as the instruments, and the knowing instruments, for violating what they swear to support!

The oath of office, too, imposed by the legislature, is completely demonstrative of the legislative opinion on this subject. It is in these words: "I do solemnly swear that I will administer justice without respect to persons, and do equal right to the poor and to the rich; and that I will faithfully and impartially discharge all the duties incumbent on me as———, according to the best of my

abilities and understanding, agreeably to the constitution and laws of the United States."

Why does a judge swear to discharge his duties agreeably to the constitution of the United States, if that constitution forms no rule for his government—if it is closed upon him, and cannot be inspected by him?

If such be the real state of things, this is worse than solemn mockery. To prescribe, or to take this oath, becomes equally a crime.

It is also not entirely unworthy of observation, that in declaring what shall be the supreme law of the land, the constitution itself is first mentioned; and not the laws of the United States generally, but those only which shall be made in pursuance of the constitution, have that rank.

Thus, the particular phraseology of the constitution of the United States confirms and strengthens the principle, supposed to be essential to all written constitutions, that a law repugnant to the constitution is void; and that courts, as well as other departments, are bound by that instrument.

42. The Delays of the Law *[1]

William Howard Taft, in addition to having been Secretary of War and President of the United States, has also been a distinguished jurist. His interest in improving the procedure of the courts has always been very great, and in the following speech delivered many years ago before the Virginia Bar Association, Mr. Taft pointed out the factors which delay and hinder the administration of justice. Since becoming Chief Justice, Mr. Taft has given great impetus to the movement to reform judicial procedure and to expedite the work of the courts, and since 1921 several great steps in advance have been taken. One of the recent measures along these lines passed

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by Congress created a Judicial Council; a second revolutionized the appellate jurisdiction of the Supreme Court and of the Circuit Court of Appeals, thus eliminating much waste effort; others have created additional federal judgeships. Much remains, however, to be accomplished before our judicial processes can function properly.

The chief reason why the State devotes so much time and effort in the administration of justice is to promote the cause of peace and tranquillity in the community. Speaking theoretically and ideally of course, our aim is to secure equal and exact justice; but practically, the object sought is peace.

In a Republic like ours, under popular control, with the dual form of government between the states and the United States, politico-legal questions which might tend to bring on conflict between parties and factions among the people were first, the distribution of power under the Federal Constitution between the National Government and the State Government; second, the division between the executive, the legislative and the judicial branches of the Government, and, third, the limitations upon governmental action either through the National Government or the State Government, in respect to the rights of individuals.

Under our fundamental compact and its subsequent construction by the judicial branch, there was introduced a new and most effective instrument for the promotion of the peaceable settlement of these great governmental political controversies. The decisions in the cases of Marbury *v.* Madison, and Cohens *v.* Virginia, which in their personal aspect took on the phase of a fundamental difference of opinion between two great Virginians, established the principle in this country, which has never been departed from, that the ultimate arbiter in respect to such

great political and legal issues was and is the Supreme Court of the United States. It is true that this unique feature did not save us from the greatest civil war of modern times; but no one at all familiar with the history of the country can deny that this function of the Supreme Court of the United States, and a similar one within the sphere of their jurisdiction, of the Supreme Courts of the states ultimately to decide upon the limitations of legislative and executive power, have greatly contributed to the peace and tranquillity of our community. This peculiar power of courts with us has carried their usefulness for the peaceful settlement of controversies beyond anything attempted in other countries. Of course, the exercise of this power must rest on the existence of a written constitution. Without it, there would be no guide for the courts except indefinite traditions that could hardly be made the basis for judicial decision. The power of the courts to declare invalid laws of the legislature we know was not adopted without very bitter opposition; but I think the controversy was settled now so long ago that we generally agree that it has much contributed to the smooth working of our constitution, to the supremacy of law and order in our community, and offers great advantages over the methods of settling a similar class of questions in other countries.

While we may properly felicitate ourselves on this widened function of our courts, enabling us to avoid less peaceable methods of settling important politico-legal questions, have we the right to say that our present administration of justice generally insures continued popular satisfaction with its results? I think not. It may be true that down to the present time it has supplied a means of settling controversies between individuals and of bringing to punishment those who offend against the criminal laws

sufficient to prevent a general disturbance of the peace and to keep the dissatisfied from violent manifestation against the government and our present social system.

There are, however, abundant evidences that the prosecution of criminals has not been certain and thorough to the point of preventing popular protest. The existence of lynching in many parts of the country is directly traceable to this lack of uniformity and thoroughness in the enforcement of our criminal laws. This is a defect which must be remedied or it will ultimately destroy the Republic.

I venture to think that one evil which has not attracted the attention of the community at large, but which is likely to grow in importance, as the inequality between the poor and the rich in our civilization is studied, is in the delays in the administration of justice between individuals. As between two wealthy corporations, or two wealthy individual litigants, and where the subject matter of the litigation reaches to tens and hundreds of thousands of dollars, where each party litigant is able to pay the expenses of litigation, large fees to counsel, and to undergo for the time being the loss of interest on the capital involved, our present system, while not perfect, is not so far from proper results as to call for anxiety. The judges of the country, both state and national, are good men. Venality in our judges is very rare; and while the standard of judicial ability and learning may not always be as high as we should like to see it, the provisions for review and for free and impartial hearing are such as generally to give just final judgments. The inequality that exists in our present administration of justice, and that sooner or later is certain to rise and trouble us, and to call for popular condemnation and reform, is in the unequal burden which the delays and expense of litigation under our system im-

pose on the poor litigant. In some communities I know, delays in litigation have induced merchants and commercial men to avoid courts altogether and to settle their controversies by arbitration, and to this extent the courts have been relieved; but such boards of arbitration are only possible as between those litigants that are members of the same commercial body, and are in a sense associates. They offer no relief to the litigant of little means who finds himself engaged in a controversy with a wealthy opponent, whether individual or corporation.

The reform, if it is to come, must be reached through the improvement in our judicial procedure. In the first place, the codes of procedure are generally much too elaborate. It is possible to have a code of procedure simple and effective. This is shown by the present procedure in the English courts, most of which is framed by rules of court. The code of the State of New York is staggering in the number of its sections. A similar defect exists in some civil law countries. The elaborate Spanish code of procedure that we found in the Philippines when we first went there could be used by a dilatory defendant to keep the plaintiff stamping in the vestibule of justice until time had made justice impossible. Every additional technicality, every additional rule of procedure adds to the expense of litigation. It is inevitable that with an elaborate code, the expense of a suit involving a small sum is in proportion far greater than that involving a large sum. Hence it results that the cost of justice to the poor is always greater than it is to the rich, assuming that the poor are more often interested in small cases than the rich in large ones—a fairly reasonable assumption.

My impression is that if the judges of the court of last resort were charged with the responsibility within gen-

eral lines defined by the legislature for providing a system in which the hearings on appeal should be solely with respect to the merits and not with respect to procedure, and which should make for expedition, they are about as well qualified to do this as anybody to whom the matter can be delegated.

This system of delegating questions of procedure to courts has a precedent of long standing in the Supreme Court of the United States, for under the federal statutes that court has to frame the rules of equity to govern procedure in equity in the federal courts of first instance.

One reason for delay in the lower courts is the disposition of judges to wait an undue length of time in the writing of their opinions or judgments. I speak with confidence on this point, for I have been one of the sinners myself. In English courts the ordinary practice is for the judge to deliver judgment immediately upon the close of the argument, and this is the practice that ought to be enforced as far as possible in our courts of first instance. It is almost of as much importance that the court of first instance should decide promptly as that it should decide right. If judges had to do so, they would become much more attentive to the argument during its presentation and much more likely on the whole to decide right when the evidence and arguments are fresh in their mind. In the Philippines we have adopted the system of refusing a judge his regular monthly stipend unless he can file a certificate, with his receipt for his salary, in which he certifies on honor that he has disposed of all the business submitted to him within the previous sixty days. This has had a marvelously good effect in keeping the dockets of the court clear.

It may be asserted as a general proposition, to which many legislatures seem to be oblivious, that everything

which tends to prolong or delay litigation between individuals, or between individuals and corporations, is a great advantage for that litigant who has the longer purse. The man whose all is involved in the decision of the lawsuit is much prejudiced in a fight through the courts, if his opponent is able, by reason of his means, to prolong the litigation and keep him for years out of what really belongs to him. The wealthy defendant can almost always secure a compromise or yielding of lawful rights because of the necessities of the poor plaintiff. Many people who give the subject hasty consideration regard the system of appeals, by which a suit can be brought in a justice of the peace court and carried through the other courts to the supreme court, as the acme of human wisdom. The question is asked: "Shall the poor man be denied the opportunity to have his case be reëxamined in the highest tribunal in the land?" Generally the argument has been successful. In truth, there is nothing which is so detrimental to the interests of the poor man as the right which, if given to him, must be given to the other and wealthier party, of carrying the litigation to the court of last resort, which generally means two, three and four years of litigation. Could any greater opportunity be put in the hands of powerful corporations to fight off just claims, to defeat, injure or modify the legal rights of poor litigants, than to hold these litigants off from what is their just due by a lawsuit for such a period, with all the legal expenses incident to such a controversy? Every change of procedure that limits the right of appeal works for the benefit in the end of the poor litigant and puts him more on an equality with a wealthy opponent. It is probably true that the disposition of the litigation in the end is more likely to be just when three tribunals have passed upon it than when only one or two have settled it; the damage done by

the delay to the party originally entitled to the judgment generally exceeds the advantage that he has had in ultimately winning the case.

Generally in every system of courts there is a court of first instance, an intermediate court of appeals and a court of last resort. The court of first instance and the intermediate appellate court should be for the purpose of finally disposing in a just and prompt way of all controversies between litigants. So far as the litigant is concerned, one appeal is all that he should be entitled to. The community at large is not interested in his having more than one. The function of the court of last resort should not primarily be for the purpose of securing a second review or appeal to the particular litigants whose case is carried to that court. It is true that the court can only act in concrete cases between particular litigants, and so incidentally it does furnish another review to the litigants, in that case; but the real reason for granting the general principles of law for the benefit and guidance of the review should be to enable the supreme court to lay down general principles of law for the benefit and guidance of the community at large. Therefore, the appellate jurisdiction of the court of last resort should be limited to those cases which are typical and which give to it in its judgment an opportunity to cover the whole field of the law. This may be done by limiting the cases within its cognizance to those involving a large sum of money, or to the construction of the Constitution of the United States or the states or their statutes. The great body of the litigation which it is important to dispose of, to end the particular controversies, should be confined to the courts of first instance and the intermediate appellate courts. It is better that the cases be all decided promptly, even if a few are wrongly decided.

In our supreme courts the business is disposed of with perhaps as great promptness as is consistent with the purpose of their jurisdiction. The criticism that courts of last resort are too much given to technicality has, I believe, some merit in it. Codes might be drawn, however, giving the courts of review more discretion in this matter than they now do by requiring the party complaining of an error in the trial court to show affirmatively that the result would have been different if the error had not been committed. The difference in importance between an error in the hurly-burly of the actual trial and in the calm of a court of review under the urgent argument of counsel for plaintiff in error and the microscopic vision of an analytical but technical mind on the supreme bench is very great.

The complaints that the courts are made for the rich and not for the poor have no foundation in fact in the attitude of the courts upon the merits of any controversy which may come before them for the judges of this country are as free from prejudice in this respect as it is possible to be. But the inevitable effect of the delays incident to the machinery now required in the settlement of controversies in judicial tribunals is to oppress and put at a disadvantage the poor litigant and give advantage to his wealthy opponent. I do not mean to say that it is possible, humanly speaking, to put them on an exact equality in regard to litigation; but it is certainly possible to reduce greatly the disadvantage under which the man of little means labors in vindicating or defending his rights in court under the existing system, and courts and legislatures could devote themselves to no higher purpose than the elimination from the present system of those of its provisions which tend to prolong the time in which judicial controversies are disposed of.

The shortening of the time will reduce the expense, because, first, the fees of the lawyers must be less if the time is not so great. Second, the incidental court fees and costs would be less.

Now our profession is naturally conservative. It is our natural disposition to have things done in an orderly way and to believe that the way in which things have been done should not be departed from until we clearly see an opportunity for improvement. I do not object to this spirit. Especially in this country, I think there will be progressive movements sufficient to prevent such conservatism from being a real obstruction to our general progress. I venture to think, however, that in the matter of procedure and in the adoption of special methods and systems for the settling of classes of controversies, we ought to be careful that this professional conservatism does not keep us, with the power that we necessarily exercise in respect to technical legal legislation, from adopting the reforms which are in the interest of equalizing the administration of justice as far as possible between the rich and the poor.

43. The Supreme Court * [1]

Charles Evans Hughes, former Governor of New York, Justice of the United States Supreme Court and Secretary of State, is one of America's greatest figures. He is a leader of the legal profession, and a most highly respected citizen. In a recent lecture on the Blumenthal Foundation at Columbia University, Mr. Hughes has admirably pointed out the nature of the judicial function and described the position occupied by the Supreme Court in our political system.

The labors of the Supreme Court in applying general clauses of an undefined content are not limited to the

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duty of giving effect to the Constitution. The Court is the final interpreter of the acts of Congress. Statutes come to the judicial test not simply of constitutional validity but with respect to their true import, and a statute finally means what the courts say it means. The English language has always been found to be a difficult medium for exactness in law making; hence, much legal verbiage, where a business man would naïvely use a simple phrase although, if put to a crucial test, it might reveal several different meanings of which he was happily unconscious. The legislature, in search of an elusive definiteness, often resorts to needless verbal complications which must be disentangled by the courts to get at the legislature's intent; not, of course, an intent outside, but one which must be found inside, the words used. What is worse is that not infrequently the passage of a measure is assured only through the compromises of general clauses which mean different things to different minds and the courts are left to resolve what the legislature should have clarified, and thus to bear the criticism of those who desired to have the statute in the form the legislature would not adopt. The more important the subject, the more probable is this emulation in statutory clauses of constitutional indefiniteness.

Much of the criticism of the Court deals with what is occasional rather than typical. In looking to the future the fundamental questions are these: Are we ready to give up a written constitution with its definition of powers? Do we desire to abandon our dual system and to confer upon a single legislature the supreme authority of the people through a completely centralized government? If we maintain our dual system and a written constitution, with the limitations essential to such a plan, do we wish to attempt to define more specifically in the consti-

tution the division of authority as, for example, in relation to interstate commerce? Is it likely that we could make a success of such a plan? If we prefer to retain the dual system and limited governmental powers, are we ready to give to Congress the final determination whether the States exceed the powers retained by them or whether Congress itself transcends the limitations of its own powers? If not, what substitute is there to suggest for the Supreme Court? Do we desire constitutional questions, if such there are to be, to be determined by political assemblies and by partisan divisions? Is there any better plan, whatever imperfections it may have, for securing a reasonably continuous, non-partisan and philosophical exposition of the constitution than by regarding it as the supreme law of the land to be applied in actual cases and controversies through the exercise of the judicial power? These are the questions which must be considered in discussing the value of the work of the Supreme Court, which in a practical and systematic way enables us to draw upon our resources of reason in maintaining the balance of rights which is characteristic of the Republic.

Proposals for changes in the organization and the exercise of the jurisdiction of the Supreme Court have been of two sorts; those suggested for the purpose of promoting its efficiency and those which have been sought to curb the exertion of the judicial power. Relief from the laborious duty at Circuit became absolutely necessary if the Justices were properly to attend to the work of the Supreme Court. The establishment of Circuit Courts of Appeals, as intermediate appellate tribunals, was a most important improvement in the Federal judicial system. It has been said that "perhaps the decisive factor in the history of the Supreme Court is its progressive contraction of jurisdiction." But the limitation of the scope of re-

view, as a matter of right on the part of litigants, has been accompanied by the preservation of the judicial authority to review in the cases deemed appropriate for its exercise. The selection of such cases, in an increasing degree, has been left with the Supreme Court itself. Efforts further to increase the number of judges have failed. After the number of associate justices had been enlarged to eight in 1837, Justice Story wrote: "You may ask how the judges got along together. We made very slow progress, and did less in the same time than I ever knew. The addition to our number has most sensibly affected our facility as well as rapidity of doing business. 'Many men of many minds,' require a great deal of discussion to come to definite results; and we found ourselves often involved in long and very tedious debates. I verily believe, if there were twelve judges, we should do no business at all, or at least very little." Doubtless, a rhetorical exaggeration to emphasize a strong point! Everyone who has worked in a group knows the necessity of limiting size to obtain efficiency. And this is peculiarly true of a judicial body. It is perhaps too much to say that the Supreme Court could not do its work if two more members were added, but I think that the consensus of competent opinion is that it is large enough. Happily, suggestions for an increased number and for two divisions of the Court have not been favored because of their impracticality in view of the character of the Court's most important function.

A certain plausibility has attached to the proposal that legislation should not be held to be unconstitutional by a bare majority of the judges, but that the concurrence of six, or even of seven, judges should be required. Difficulties at once suggest themselves. If, for example, a lower Federal Court, or a State Court has held legislation to be unconstitutional, is the decision to be reversed

by a minority of the Supreme Court who believe it to be constitutional? It is often said, when a decision of the Court is by a vote of five to four, that one judge determines the result. This is more striking than accurate, for the actual decision is that of five judges. But if the concurrence of six judges were required, then if there were four judges of a contrary opinion, they would in effect out-vote the five and it could still be said that the vote of one judge had made the result possible, as otherwise there might have been the required six votes. If seven votes were necessary to hold a statute invalid, then three judges would outweigh six on a judicial question, and still a change of one vote might be determinative.

It is urged that as legislation should be held to be repugnant to the Constitution only in clear cases, and as this is recognized as a principle of decision, a division in the Court should be regarded as enough to show reasonable doubt. Plainly that suggestion cannot be carried to its logical limit. If it were, the action of a single judge in the court of first instance, holding an act to be constitutional would be conclusive, for is he not a reasonable man? Or, if that judge decided the act to be unconstitutional, and in the Circuit Court of Appeals two judges agreed with him, but the third dissented, should not the majority bow to his dissent as sufficiently indicating doubt? We have similar considerations with respect to State court decisions. Why have any review by the Supreme Court in such cases, unless the courts under review, whether Federal or State, should hold legislation to be unconstitutional? And, then, on the view suggested, their unanimous opinions to this effect might be overthrown, and the legislation still be sustained, if a minority of the Supreme Court considered it to be valid, as a vote of the majority of the Supreme Court would not be sufficient to render a contrary decision.

In truth, judges will have their convictions, and it is of the essence of the appropriate exercise of judicial power that these should be independently expressed. Divisions on close questions cannot be prevented. The unpopularity of a decision against the constitutionality of a legislative act is sometimes too readily assumed by those who propose changes. It has already been observed that our history shows serious complaint in certain important cases where acts of Congress have been sustained. If the object is to create public contentment with the result, it would not likely be obtained if a statute highly obnoxious to many, as interfering with cherished liberty of action, were made effective by a minority of the highest court. It must also be remembered that we are considering the exercise of the judicial power which the Constitution places in one Supreme Court and the lower Federal courts. The Supreme Court has appellate jurisdiction with such exceptions and under such regulations as are made by Congress. But making allowance for such exceptions and giving effect to such regulations as Congress may appropriately provide with respect to the cases in which the appellate jurisdiction shall be exercised, when the appellate jurisdiction attaches to a case the judicial power extends to it, and it is doubtful to say the least if Congress would have the constitutional authority to fetter the exercise of the judicial power by giving the control of it to the minority of the Court. In a small group, the action of any one may be of decisive effect, no matter what rule may be adopted, and the method that best accords with our traditions and is most likely to have public favor in the long run is that of decision by the majority.

In our system, the individual finds security in his rights because he is entitled to the protection of tribunals that represent the capacity of the community for impartial

judgment as free as possible from the passion of the moment and the demands of interest or prejudice. The ends of social justice are achieved through a process by which every step is examined in the light of the principles which are our inheritance as a free people. The spirit of the work of the Supreme Court permeates every legislative assembly and every important discussion of reforms by legislative action. We largely subject our political thinking to the conception of law, not as an arbitrary edict of power, but as governed by the fundamental conceptions of justice. No one is above the law. The officer of government, the State itself, is subject to the fundamental law, that the humblest may invoke. Our relations to each other, to the society of which we are a part, to the governments, Federal and State, which are the organs of that society, come to the judicial test, as far removed from the intrusions of artifice, selfishness and caprice as any test can be. The Supreme Court is the embodiment of this conception of our law, the exemplar of its application, and the assurance that in the complexities of an extraordinarily expanded life, we have not forgotten the ancient faith by which we have pledged ourselves to render each one his due,—a faith which alone makes it possible to look to the coming years with confidence as well as hope.

CHAPTER XI

CONSERVATION OF NATURAL RESOURCES

44. Declaration of the Conference of Governors, 1908

In 1908 President Roosevelt summoned to Washington a conference of all the Governors of the States and territories for the purpose of discussing the problem of conserving our natural resources. After having discussed the question for several days and in response to the vital needs of the nation, the conference made a declaration of principles which is given below. As a result of the conference much impetus was given to the conservation movement with the result that a more economical use of our natural resources is now being made.

We, the Governors of the States and Territories of the United States of America, in conference assembled, do hereby declare the conviction that the great prosperity of the country rests upon the abundant resources of the land chosen by our forefathers for their homes and where they laid the foundation of this great nation.

We look upon these resources as a heritage to be made use of in establishing and promoting the comfort, prosperity and happiness of the American people, but not to be wasted, deteriorated or needlessly destroyed.

We agree that our country's future is involved in this: that the great natural resources supply the material basis upon which our civilization must continue to depend and upon which the perpetuity of the nation itself rests.

We agree, in the light of facts brought to our knowledge

and from information received from sources which we cannot doubt, that this material basis is threatened with exhaustion. Even as each succeeding generation from the birth of the nation has performed its part in promoting the progress and development of the republic, so do we in this generation recognize it as a high duty to perform our part, and this duty in large degree lies in the adoption of measures for the conservation of the natural wealth of the country.

We declare our firm conviction that this conservation of our natural resources is a subject of transcendent importance which should engage unremittingly the attention of the nation, the States and the people in earnest coöperation. These natural resources include the land on which we live and which yields our food; the waters, which fertilize the soil, supply power and form great avenues of commerce; the forests, which yield the materials for our homes, prevent erosion of the soil and conserve the navigation and other uses of our streams, and minerals, which form the basis of our industrial life and supply us with heat, light and power.

We agree that the land should be so used that erosion and soil wash should cease, that there should be reclamation of arid and semi-arid regions by means of irrigation and of swamp and overflowed regions by means of drainage; that the waters should be so conserved and used as to promote navigation, to enable the arid regions to be reclaimed by irrigation and to develop power in the interests of the people; that the forests, which regulate our rivers, support our industries and promote the fertility and productiveness of the soil, should be preserved and perpetuated; that the minerals found so abundantly beneath the surface, should be so used as to prolong their utility, that the beauty, healthfulness and habitability of

our country should be preserved and increased; that the sources of national wealth exist for the benefit of all the people and that the monopoly thereof should not be tolerated.

We commend the wise forethought of the President in sounding the note of warning as to the waste and exhaustion of the natural resources of the country and signify our high appreciation of his action in calling this Conference to consider the same and to seek remedies therefor through coöperation of the Nation and the States. We agree that this coöperation should find expression in suitable action by the Congress within the limits of and coextensive with the national jurisdiction of the subject and, complementary thereto, by the Legislatures of the several States within the limits of and coextensive with their jurisdiction.

We declare the conviction that in the use of the natural resources our independent States are interdependent and bound together by ties of mutual benefits, responsibilities and duties.

We agree in the wisdom of future conferences between the President, members of Congress and the Governors of the States on the conservation of our natural resources with a view to continued coöperation and action on the lines suggested. And to this end we advise that from time to time, as in his judgment may seem wise, the President call the Governors of the States, members of Congress and others into conference.

We agree that further action is advisable to ascertain the present condition of our natural resources and to promote the conservation of the same. And to that end we recommend the appointment by each State of a commission on the conservation of natural resources to coöperate with

each other and with any similar commission on behalf of the Federal Government.

We urge the continuation and extension of forest policies adapted to secure the husbanding and renewal of our diminishing timber supply, prevention of soil erosion, the protection of the headwaters and the maintenance of the purity and navigability of our streams. We recognize that the private ownership of forest lands entails responsibilities in the interest of all the people, and we favor the enactment of laws looking to the protection and replacement of privately owned forests.

We recognize in our waters a most valuable asset of the people of the United States and we recommend the enactment of laws looking to the conservation of water resources for irrigation, water supply, power and navigation, to the end that navigable and source streams may be brought under complete control and fully utilized for every purpose. We especially urge on the Federal Congress the immediate adoption of a wise, active and thorough waterway policy, providing for the prompt improvement of our streams and conservation of their watersheds required for the uses of commerce and the protection of the interests of our people.

We recommend the enactment of laws looking to the prevention of waste in the mining and extraction of coal, oil, gas and other minerals, with a view to their wise conservation for the use of the people and to the protection of human life in the mines.

Let us conserve the foundations of our prosperity.

CHAPTER XII

THE TERRITORIES

45. Status of the Territories

Following the Spanish-American War, in a series of famous decisions known as the Insular Cases, the Supreme Court evolved a doctrine which has allowed Congress considerable leeway in the establishment of territorial government. In the recent case which is given below, the question to be decided was whether Porto Rico had been made an incorporated territory—that is, whether the whole United States Constitution applied to Porto Rico. In making this decision, the court through Chief Justice Taft reviewed the earlier cases involving the territories, and demonstrated the status of each territory.

We have now to inquire whether that part of the Sixth Amendment to the Constitution, which requires that, in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, applies to Porto Rico. Another provision on the subject is in Article III of the Constitution providing that the trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed. The Seventh Amendment of the Constitution provides that in suits at common law, where the value

in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved. It is well settled that these provisions for jury trial in criminal and civil cases apply to the territories of the United States. But it is just as clearly settled that they do not apply to territory belonging to the United States, which has not been incorporated into the Union.

It was further settled in Downes *v.* Bidwell that neither the Philippines nor Porto Rico was territory which had been incorporated in the Union or become a part of the United States, as distinguished from merely belonging to it; and that the acts giving temporary government to the Philippines had no such effect. The Insular Cases revealed much diversity of opinion in this court as to the constitutional status of the territory acquired by the Treaty of Paris ending the Spanish War, but the Dorr Case shows that the opinion of Mr. Justice White of the majority, in Downes *v.* Bidwell, has become the settled law of the court. The conclusion of this court in the Dorr Case was as follows:

"We conclude that the power to govern territory, implied in the right to acquire it, and given to Congress in the Constitution in Article IV, section 3, to whatever other limitations it may be subject, the extent of which must be decided as questions arise, does not require that body to enact for ceded territory, not made a part of the United States by Congressional action, a system of laws which shall include the right of trial by jury, and that the Constitution does not, without legislation and of its own force, carry such right to territory so situated."

The question before us, therefore, is: Has Congress, since the Foraker Act of April 12, 1900, enacted legislation incorporating Porto Rico into the Union? Counsel for the plaintiff in error give, in their brief, an extended

list of acts, to which we shall refer later, which they urge as indicating a purpose to make the island a part of the United States, but they chiefly rely on the Organic Act of Porto Rico of March 2, 1917, known as the Jones Act.

The Act is entitled "An Act to provide a civil government for Porto Rico, and for other purposes." It does not indicate by its title that it has a purpose to incorporate the island into the Union. It does not contain any clause which declares such purpose or effect. While this is not conclusive, it strongly tends to show that Congress did not have such an intention. Few questions have been the subject of such discussion and dispute in our country as the status of our territory acquired from Spain in 1899. The division between the political parties in respect to it, the diversity of the views of the members of this court in regard to its constitutional aspects, and the constant recurrence of the subject in the Houses of Congress, fixed the attention of all on the future relation of this acquired territory to the United States. Had Congress intended to take the important step of changing the treaty status of Porto Rico by incorporating it into the Union, it is reasonable to suppose that it would have done so by the plain declaration, and would not have left it to mere inference. Before the question became acute at the close of the Spanish War, the distinction between acquisition and incorporation was not regarded as important, or at least it was not fully understood and had not aroused great controversy. Before that, the purpose of Congress might well be a matter of mere inference from various legislative acts; but in these latter days, incorporation is not to be assumed without express declaration, or an implication so strong as to exclude any other view.

Again, the second section of the act is called a "Bill of Rights," and included therein is substantially every one

of the guaranties of the federal Constitution, except those relative to indictment by a grand jury in the case of infamous crimes and the right of trial by jury in civil and criminal cases. If it was intended to incorporate Porto Rico into the Union by this act, which would, ex proprio vigore, make applicable the whole bill of rights of the Constitution to the island, why was it thought necessary to create for it a bill of rights and carefully exclude trial by jury? In the very forefront of the act is this substitute for incorporation and application of the bill of rights of the Constitution. This seems to us a conclusive argument against the contention of counsel for the plaintiff in error.

The section of the Jones Act which counsel press on us is section 5. This in effect declares that all persons who under the Foraker Act were made citizens of Porto Rico and certain other residents shall become citizens of the United States, unless they prefer not to become such, in which case they are to declare such preference within six months, and thereafter they lose certain rights under the new government. When Porto Ricans passed from under the government of Spain, they lost the protection of that government as subjects of the King of Spain, a title by which they had been known for centuries. They had a right to expect, in passing under the dominion of the United States, a status entitling them to the protection of their new sovereign. It became a yearning of the Porto Ricans to be American citizens, therefore, and this act gave them the boom. What additional rights did it give them? It enabled them to move into the continental United States and becoming residents of any State there to enjoy every right of any other citizen of the United States, civil, social and political. A citizen of the Philippines must be naturalized before he can settle and vote in

this country. Not so the Porto Rican under the Organic Act of 1917.

In Porto Rico, however, the Porto Rican can not insist upon the right of trial by jury, except as his own representatives in his legislature shall confer it on him. The citizen of the United States living in Porto Rico cannot there enjoy a right of trial by jury under the Federal Constitution, any more than the Porto Rican. It is locality that is determinative of the application of the Constitution, in such matters as judicial procedure, and not the status of the people who live in it.

It is true that, in the absence of other and countervailing evidence, a law of Congress or a provision in a treaty acquiring territory, declaring an intention to confer political and civil rights on the inhabitants of the new lands as American citizens, may be properly interpreted to mean an incorporation of it into the Union, as in the case of Louisiana and Alaska. This was one of the chief grounds upon which this court placed its conclusion that Alaska had been incorporated in the Union, in Rassmussen *v.* United States. But Alaska was a very different case from that of Porto Rico. It was an enormous territory, very sparsely settled and offering opportunity for immigration and settlement by American citizens. It was on the American Continent and within easy reach of the then United States. It involved none of the difficulties which incorporation of the Philippines and Porto Rico presents, and one of them is in the very matter of trial by jury. This court refers to the difficulties in Dorr *v.* United States:

"If the right to trial by jury were a fundamental right which goes wherever the jurisdiction of the United States extends, or if Congress, in framing laws for outlying territory belonging to the United States was obliged to estab-

lish that system by affirmative legislation, it would follow that, no matter what the needs or capacities of the people, trial by jury, and in no other way, must be forthwith established, although the result may be to work injustice and provoke disturbance rather than to aid the orderly administration of justice. Again, if the United States shall acquire by treaty the cession of territory having an established system of jurisprudence, where jury trials are unknown, but a method of fair and orderly trial prevails under an acceptable and long-established code, the preference of the people must be disregarded, their established customs ignored and they themselves coerced to accept, in advance of incorporation into the United States, a system of trial unknown to them and unsuited to their needs. We do not think it was intended, in giving power to Congress to make regulations for the territories, to hamper its exercise with this condition."

The jury system needs citizens trained to the exercise of the responsibilities of jurors. In common-law countries centuries of tradition have prepared a conception of the impartial attitude jurors must assume. The jury system postulates a conscious duty of participation in the machinery of justice which it is hard for people not brought up in fundamentally popular government at once to acquire. One of its greatest benefits is in the security it gives the people that they, as jurors actual or possible, being a part of the judicial system of the country can prevent its arbitrary use or abuse. Congress has thought that a people like the Filipinos or the Porto Ricans, trained to a complete judicial system which knows no juries, living in compact and ancient communities, with definitely formed customs and political conceptions, should be permitted themselves to determine how far they wish to adopt this institution of Anglo-Saxon origin, and when.

We cannot find any intention to depart from this policy in making Porto Ricans American Citizens.

We need not dwell on another consideration which requires us not lightly to infer, from acts thus easily explained on other grounds, an intention to incorporate in the Union these distant ocean communities of a different origin and language from those of our continental people. Incorporation has always been a step, and an important one, leading to statehood. Without, in the slightest degree, intimating an opinion as to the wisdom of such a policy, for that is not our province, it is reasonable to assume that when such a step is taken it will be begun and taken by Congress deliberately and with a clear declaration of purpose, and not left a matter of mere inference or construction.

On the whole, therefore, we find no features in the Organic Act of Porto Rico of 1917 from which we can infer the purpose of Congress to incorporate Porto Rico into the United States with the consequences which would follow.

46. The Philippine Problem

The United States has not developed a definite colonial policy with regard to its extra-Continental possessions. The attitude of our government varies from territory to territory, each one being considered a separate problem and not being treated as part of a larger colonial problem. The Philippines have caused us more concern than our other territories and the future of those islands is an important current question. There are two points of view in regard to the Philippine question, and the selections which follow have been made with a view to presenting both sides. Excerpts from five documents have been taken: (a) President McKinley's instructions to the Philippine Commission appointed in 1900; (b) the preamble to the Jones Law passed in 1916 under a Democratic administration; (c) President Wilson's last annual Message to Congress; (d) Presi-

sonal and social rights of the people of the islands and to treat them with the same courtesy and respect for their personal dignity which the people of the United States are accustomed to require from each other.

The articles of capitulation of the city of Manila on the 13th of August, 1898, concluded with these words:

"This city, its inhabitants, its churches and religious worship, its educational establishments, and its private property of all descriptions, are placed under the special safeguard of the faith and honor of the American Army."

I believe that this pledge has been faithfully kept. As high and sacred an obligation rests upon the government of the United States to give protection for property and life, civil and religious freedom, and wise, firm, and unselfish guidance in the paths of peace and prosperity to all the people of the Philippine Islands. I charge this Commission to labor for the full performance of this obligation, which concerns the honor and conscience of their country, in the hope that through their labors all the inhabitants of the Philippine Islands may come to look with gratitude to the day when God gave victory to American arms at Manila and set their land under the sovereignty and the protection of the people of the United States.

(b) Preamble to the Jones Law

Whereas it was never the intention of the people of the United States in the incipiency of the War with Spain to make it a war of conquest or for territorial aggrandizement; and

Whereas it is, as it has always been, the purpose of the people of the United States to withdraw their sovereignty over the Philippine Islands and to recognize

their independence as soon as a stable government can be established therein; and

Whereas for the speedy accomplishment of such purpose it is desirable to place in the hands of the people of the Philippines as large a control of their domestic affairs as can be given them without, in the meantime, impairing the exercise of the rights of sovereignty by the people of the United States, in order that, by the use and exercise of popular franchise and governmental powers, they may be the better prepared to fully assume the responsibilities and enjoy all the privileges of complete independence: Therefore *Be it enacted*——

(c) President Wilson's Last Annual Message *

Allow me to call your attention to the fact that the people of the Philippine Islands have succeeded in maintaining a stable government since the last action of the Congress in their behalf, and have thus fulfilled the condition set by Congress as precedent to a consideration of granting independence to the islands. I respectfully submit that this condition precedent having been fulfilled, it is now our liberty and our duty to keep our promise to the people of those islands by granting them the independence which they so honorably covet.

(d) President Coolidge's Letter to Speaker Roxas *

A fair appraisal of all these considerations, and of others which suggest themselves without requiring enumeration, will, I am sure, justify the frank statement that the government of the United States would not feel that it had performed its full duty by the Filipino people or discharged all of its obligations to civilization if it

should yield at this time to your aspiration for national independence. The present relationship between the American nation and the Filipino people arose out of a strange, and almost unparalleled, turn of international affairs. A great responsibility came unsought to the American people. It was not imposed upon them because they had yielded to any designs of imperialism or of colonial expansion. The fortunes of war brought American power to your islands, playing the part of an unexpected and welcome deliverer. You may be very sure that the American people have never entertained the purpose of exploiting the Filipino people or their country. There have, indeed, been different opinions among our own people as to the precisely proper relationship with the Filipinos. There are some among us, as there are some among your people, who believe that immediate independence of the Philippines would be best for both. I should be less than candid with you, however, if I did not say that, in my judgment, the strongest argument that has been used in the United States in support of immediate independence of the Philippines is not the argument that it would benefit the Filipinos but that it would advantage the United States. Feeling as I do, and as I am convinced the great majority of Americans do regarding our obligations to the Filipino people, I have to say that I regard such arguments as unworthy. The American people will not evade or repudiate the responsibility they have assumed in this matter. The American government is convinced that it has the overwhelming support of the American nation in its conviction that present independence would be a misfortune and might easily become a disaster to the Filipino people. Upon that conviction the policy of this government is based.

Thus believing, I feel that I am serving those interests

by saying frankly that it is not possible to consider the extension of a larger measure of autonomy to the Filipino people until they shall have demonstrated a readiness and capacity to coöperate fully and effectively with the American government and authorities. For such coöperation I earnestly appeal to every friend of the islands and their people. I feel all confidence that in the measure in which it shall be extended the American government will be disposed to grant in increasing degree the aspirations of your people. Nothing could more regrettably affect the relations of the two peoples than that the Filipinos should commit themselves to a program calculated to inspire the fear that possibly the governmental concessions already made have been in any measure premature.

If the time comes when it is apparent that independence would be better for the people of the Philippines from the point of view of both their domestic concerns and their status in the world, and if when that time comes the Filipino people desire complete independence, it is not possible to doubt that the American government and people will gladly accord it.

Frankly, it is not felt that that time has come. It is felt that in the present state of world relationship the American government owes an obligation to continue extending a protecting arm to the people of these islands. It is felt also that, quite aside from this consideration, there remain to be achieved by the Filipino people many greater advances on the road of education, culture, economic and political capacity before they should undertake the full responsibility for their administration. The American government will assuredly coöperate in every way to encourage and inspire the full measure of progress which still seems a necessary preliminary to independence.

(e) President Coolidge's Veto Message *

I have dwelt at length on the economic difficulties which would be encountered by an independent government in the Philippines, not because these are necessarily the greatest difficulties, but because they are those that may be most readily appreciated and about which there can be the least controversy. Furthermore, I have heretofore referred to the other difficulties of an internal and external political character.

Such a government, crippled by the direct loss of revenue, by increased interest rates on loans, and by the paralyzation of its industries, would be called on to incur the added cost of keeping up a diplomatic service, army, navy, and other features of sovereignty. It is obvious that the revenues of the islands would be totally inadequate to maintain a separate government.

These are but a few of the problems which would arise from a status of independence and which should be seriously considered by the people of the Philippines. In noting the constructive advance which they have made on the road of progress under the American flag, the blessings of peace, security, prosperity, liberty and opportunity that they have enjoyed, they should not lose sight of the fact that without the material aid extended to them and which they still need, these conditions could not have existed.

With a condition of peace, progress and prosperity hitherto unknown in their history, with self-government largely attained, with advantages enjoyed in many cases greater than those of American citizens, the people of the Philippines may well reflect seriously before wishing to embark on the unchartered stormy sea of independence

surrounded by unknown dangers in a craft ill-fitted for the difficulties to be met. Independence is an intangible ideal which has often brought disillusionment and disaster in its train. Peace, progress, prosperity, security, liberty and freedom are tangible benefits not lightly to be cast aside. The foundation of our policy has been the welfare of the people of the Philippines. That is today our constant goal.

The United States assumed its burden of responsibilities in the Philippine Islands not in a spirit of aggression, of avarice, or exploitation, but with a sincere desire to promote the best interests of the people of the Islands. In that spirit it has guided them on the road to progress. It cannot, if it would, avoid the obligation of deciding the degree of self-government which the people of the Philippine Islands are capable of sustaining at any given time. The responsibility, both to the Philippine people and to civilization, is there. It cannot be shifted.

The ability of a people to govern themselves is not easily attained. History is filled with failures of popular government. It cannot be learned from books; it is not a matter of eloquent phrases. Liberty, freedom, independence, are not mere words the repetition of which brings fulfillment. They demand long, arduous, self-sacrificing preparation. Education, knowledge, experience, sound public opinion, intelligent participation by the great body of the people, high ideals—these things are essential. The degree in which they are possessed determines the capability of a people to govern themselves. In frankness and with the utmost friendliness, I must state my sincere conviction that the people of the Philippine Islands have not yet attained the capacity of full self-government.

How can this ultimate goal best be attained? Certainly not by constant agitation and opposition. That policy but

stands in the way of progress. In governmental, as in social relationships, "liberty exists in proportion to wholesome self-restraint." Demonstration of the ability to carry on successfully the large powers of government already possessed would be far more convincing than continued agitation for complete independence. Power brings responsibilities to the people of the Philippines as well as to the people of the United States. Friendly coöperation in promoting the welfare of the Philippine Islands should be our constant aim. Along that road alone lies progress.

CHAPTER XIII

EXPANSION OF NATIONAL ACTIVITIES

47. Federal Centralization [1]

The increased activities of the federal government have caused much concern throughout the country, and today there are many who would call a halt to the increasing encroachments of the government at Washington upon the governments of the states. This address by Elihu Root delivered in 1906 before the Pennsylvania Society in New York, points out what the states must do to preserve their local self-government.

This gathering peculiarly represents two ancient commonwealths, each looking back to a century and a half of colonial history before the formation of the American Union, each possessed of strong individuality, derived from the long practice of self-government, and both conspicuous among all the States for leadership in population and wealth, for commerce and manufacture, for art and science, and for the priceless traditions of great citizens in former generations. It seems appropriate to make here some observations upon a subject which is much in the minds of thoughtful Americans of these days.

What is to be the future of the States of the Union under our dual system of constitutional government?

The conditions under which the clauses of the Constitution distributing powers to the national and state governments are now and henceforth to be applied, are widely different from the conditions which were or could have

[1] Reprinted with the permission of The Harvard University Press.

been within the contemplation of the framers of the Constitution, and widely different from those which obtained during the early years of the Republic. When the authors of *The Federalist* argued and expounded the reasons for union and the utility of the provisions contained in the Constitution, each separate colony transformed into a state was complete in itself and sufficient to itself, except as to a few exceedingly simple external relations of state to state and to foreign nations; from the origin of production to the final consumption of the product, from the birth of a citizen to his death, the business, the social and the political life of each separate community began and ended for the most part within the limits of the state itself; the long time required for travel and communication between the different centers of population, the difficulties and hardships of long and laborious journeys, the slowness of the mails, and the enormous cost of transporting goods, kept the people of each state tributary to their own separate colonial center of trade and influence, and kept their activities within the ample and sufficient jurisdiction of the local laws of their state. The fear of the fathers of the Republic was that these separate and self-sufficient communities would fall apart, that the Union would resolve into its constituent elements, or that, as it grew in population and area, it would split up into a number of separate confederacies. Few of the men of 1787 would have deemed it possible that the Union they were forming could be maintained among eighty-five millions of people, spread over the vast expanse from the Atlantic to the Pacific and from the Lakes to the Gulf.

Three principal causes have made this possible.

One cause has been the growth of a national sentiment, which was at first almost imperceptible. The very difficulties and hardships to which our nation was subjected

in its early years, the injuries to our commerce, and the insults and indignities to our flag on the part of both of the contestants in the great Napoleonic wars, served to keep the nation and national interests and national dignity constantly before the minds and in the feelings of the people. As the tide of emigration swept westward, new states were formed of citizens who looked back to the older states as the homes of their childhood and affection and the origin of their laws and customs, and who never had the peculiar and special, separate political life of the colonies. The Civil War settled the supremacy of the nation throughout the territory of the Union, and its sacrifices sanctioned and made enduring that national sentiment. Our country as a whole, the noble and beloved land of every citizen of every state, has become the object of pride and devotion among all our people, North and South, within the limits of the proud old colonial commonwealths, throughout the vast region where Burr once dreamed of a separate empire dominating the valley of the Mississippi, and upon the far-distant shores of the Pacific; and by the side of this strong and glowing loyalty to the nation, sentiment for the separate states has become dim and faint in comparison.

The second great influence has been the knitting together in ties of common interest, of the people forming the once separate communities through the working of free trade among the states. Never was a concession dictated by enlightened judgment for the common benefit, more richly repaid than that by which the states surrendered in the Federal Constitution the right to lay imposts or duties on imports or exports without the consent of Congress. To it we owe the domestic market for the products of our farms and forests and mines and factories without a parallel in history, and an internal trade which

already exceeds the entire foreign trade of all the rest of the world; and to it we owe in a high degree the constant drawing together of all parts of this vast and diversified country in the bands of common interest and in the improving good understanding and kindly feeling of frequent intercourse.

The third great cause of change is the marvelous development of facilities for travel and communication produced by the inventions and discoveries of the past century. The swift trains that pass over our two hundred and twenty thousand miles of railroad, the seventy millions of messages that flash over the more than fourteen hundred thousand miles of telegraph wires, the conversation across vast spaces through our more than four million four hundred thousand telephone instruments, take no note of state lines; they have broken down the barriers between the separate communities and they have led to a reorganization of the business and social life of the people of the United States along lines which, for the most part, altogether ignore the boundaries of the states. I left the borders of Virginia this afternoon and traversed Maryland, Delaware, Pennsylvania, and New Jersey to the state of New York, and, barring accident, I shall breakfast tomorrow morning again on the shore of the Potomac. The time required for this journey would hardly have sufficed for an ordinary carriage drive from the adjoining county of Westchester a hundred years ago. Any one of us can go now in a neighboring room in this hotel and talk with a friend in Boston or Chicago and recognize his voice and transact business which formerly would have required months to accomplish, if it could have been done at all. The lines of trade, of financial operation, of social intercourse, of thought and opinion that radiate from the great centers of life in our country such as Boston and New

York, and Philadelphia and Baltimore, and Chicago and St. Louis, and New Orleans and San Francisco, and many another great city, are perfectly regardless of state distinctions. Our whole life has swung away from the old state centers and is crystallizing about national centers; the farmer harvests his grain and fattens his cattle, not as formerly, with reference to the wants of his own home community, but for markets thousands of miles away; the manufacturer operates his mills and his factories to meet the needs of far-distant consumers; the merchant has his customers in many states; all—the farmer, the manufacturer, the merchant, the laborer—look for the supplies of their food and clothing, not to the resources of the home farm, or village, or town, but to the resources of the whole continent. The people move in great throngs to and fro from state to state and across states; the important news of each community is read at every breakfast table throughout the country; the interchange of thought and sentiment and information is universal; in the wide range of daily life and activity and interest the old lines between the states and the old barriers which kept the states as separate communities are completely lost from sight. The growth of national habits in the daily life of a homogeneous people keeps pace with the growth of national sentiment.

Such changes in the life of the people cannot fail to produce corresponding political changes. Some of those changes can be plainly seen now in progress. It is plainly to be seen that the people of the country are coming to the conclusion that in certain important respects the local laws of the separate states, which were adequate for the due and just regulation and control of the business which was transacted, and the activity which began and ended within the limits of the several states, are inadequate for the due

and just control of the business which was transacted, and the activity which began and ended within the limits of the several states, are inadequate for the due and just control of the business and activities which extend throughout all the states, and that such power of regulation and control is gradually passing into the hands of the National Government. Sometimes by an assertion of the interstate commerce power, sometimes by an assertion of the taxing power, the National Government is taking up the performance of duties which under the changed conditions the separate states are no longer capable of adequately performing. The federal anti-trust law, the anti-rebate law, the railroad rate law, the meat-inspection law, the oleomargarine law, the pure-food law, are examples of the purpose of the people of the United States to do through the agency of the National Government the things which the separate state governments formerly did adequately but no longer do adequately. The end is not yet. The process that interweaves the life and action of the people in every section of our country with the people in every other section, continues and will continue with increasing force and effect; we are urging forward in a development of business and social life which tends more and more to the obliteration of state lines and the decrease of state power as compared with national power; the relations of the business over which the Federal Government is assuming control, of interstate transportation with state transportation, of interstate commerce with state commerce, are so intimate and the separation of the two is so impracticable, that the tendency is plainly toward the practical control of the National Government over both. New projects of national control are mooted; control of insurance, uniform divorce laws, child-labor laws, and

many others affecting matters formerly entirely within the cognizance of the state are proposed.

With these changes and tendencies, in what way can the power of the states be preserved?

I submit to your judgment, and I desire to press upon you with all the earnestness I possess, that there is but one way in which the states of the Union can maintain their power and authority under the conditions which are now before us, and that way is by an awakening on the part of the states to a realization of their own duties to the country at large. Under the conditions which now exist, no state can live unto itself alone, and regulate its affairs with sole reference to its own treasury, its own convenience, its own special interests. Every state is bound to frame its legislation and its administration with reference not only to its own special affairs, but with reference to the effect upon all its sister states, as every individual is bound to regulate his conduct with some reference to its effect upon his neighbors. The more populous the community and the closer individuals are brought together, the more imperative becomes the necessity which constrains and limits individual conduct. If any state is maintaining laws which afford opportunity and authority for practices condemned by the public sense of the whole country, or laws which, through the operation of our modern system of communications and business, are injurious to the interests of the whole country, that state is violating the conditions upon which alone its power can be preserved. If any state maintains laws which promote and foster the enormous overcapitalization of corporations condemned by the people of the country generally; if any state maintains laws designed to make easy the formation of trusts and the creation of monopolies; if any state maintains laws which permit conditions

of child labor revolting to the sense of mankind; if any state maintains laws of marriage and divorce so far inconsistent with the general standard of the nation as violently to derange the domestic relations, which the majority of the states desire to preserve, that state is promoting the tendency of the people of the country to seek relief through the National Government and to press forward the movement for national control and the extinction of local control. The intervention of the National Government in many of the matters which it has recently undertaken would have been wholly unnecessary if the states themselves had been alive to their duty toward the general body of the country.

It is useless for the advocates of state rights to inveigh against the supremacy of the constitutional laws of the United States or against the extension of national authority in the fields of necessary control where the states themselves fail in the performance of their duty. The instinct for self-government among the people of the United States is too strong to permit them long to respect any one's right to exercise a power which he fails to exercise. The governmental control which they deem just and necessary they will have. It may be that such control would better be exercised in particular instances by the governments of the states, but the people will have the control they need, either from the states or from the National Government; and if the states fail to furnish it in due measure, sooner or later construction of the Constitution will be found to vest the power where it will be exercised—in the National Government. The true and only way to preserve state authority is to be found in the awakened conscience of the states, their broadened views and higher standard of responsibility to the general public; in effective legislation by the states, in conformity

to the general moral sense of the country; and in the vigorous exercise for the general public good of that state authority which is to be preserved.

48. Local Self-Government *

The position and responsibilities of the States, and the dangers of federal centralization and bureaucracy were forcefully discussed by President Coolidge in an address given at the College of William and Mary on May 15, 1926. His remarks appear particularly appropriate at this time.

The resolutions (the Virginia Resolutions of May, 1776) did not stop here. Had they done so, they would have been very far from comprehending and expressing the necessities of the American people. They went on to provide that "the regulation of the internal concerns of each colony be left to the respective colonial legislatures." This was a plain declaration of the unassailable fact that the States are the sheet anchor of our institutions. If the Federal Government should go out of existence, the common run of people would not detect the difference in the affairs of their daily life for a considerable length of time. But if the authority of the States were struck down disorder approaching chaos would be upon us within 24 hours. No method of procedure has ever been devised by which liberty could be divorced from local self-government. No plan of centralization has ever been adopted which did not result in bureaucracy, tyranny, inflexibility, reaction, and decline. Of all forms of government, those administered by bureaus are about the least satisfactory to an enlightened and progressive people. Being irresponsible they become autocratic, and being autocratic they resist all development. Unless bureaucracy is constantly resisted it breaks down representative government and

overwhelms democracy. It is the one element in our institutions that sets up the pretense of having authority over everybody and being responsible to nobody.

While we ought to glory in the Union and remember that it is the source from which the States derive their chief title to fame, we must also recognize that the national administration is not and can not be adjusted to the needs of local government. It is too far away to be informed of local needs, too inaccessible to be responsive to local conditions. The States should not be induced by coercion or by favor to surrender the management of their own affairs. The Federal Government ought to resist the tendency to be loaded up with duties which the States should perform. It does not follow that because something ought to be done the National Government ought to do it. But, on the other hand, when the great body of public opinion of the Nation requires action the States ought to understand that unless they are responsive to such sentiment the national authority will be compelled to intervene. The doctrine of State rights is not a privilege to continue in wrong-doing but a privilege to be free from interference in well-doing. This Nation is bent on progress. It has determined on the policy of meting out justice between man and man. It has decided to extend the blessings of an enlightened humanity. Unless the States meet these requirements, the National Government reluctantly will be crowded into the position of enlarging its own authority at their expense. I want to see the policy adopted by the States of discharging their public functions so faithfully that instead of an extension on the part of the Federal Government there can be a contraction.

These principles of independence, of the integrity of the Union and of local self-government have not dimin-

ished in their importance since they were so clearly recognized and faithfully declared in the Virginia convention of 150 years ago. We may wonder at their need of constant re-statement, reiteration, and defense. But the fact is that the principles of government have the same need to be fortified, reinforced, and supported that characterize the principles of religion. After enumerating many of the spiritual ideals, the Scriptures enjoin us to "think on these things." If we are to maintain the ideals of government, it is likewise necessary that we "think on these things." It is for this purpose that educational institutions exist and important anniversaries are observed.

CHAPTER XIV

GENERAL

49. Lincoln's Second Inaugural

This is one of America's greatest state papers. It shows Lincoln at his best, and undoubtedly enriches the literature of government.

At this second appearing to take the oath of the Presidential office there is less occasion for an extended address than there was at the first. Then a statement somewhat in detail of a course to be pursued seemed fitting and proper. Now, at the expiration of four years, during which public declarations have been constantly called forth on every point and phase of the great contest which still absorbs the attention and engrosses the energies of the nation, little that is new could be presented. The progress of our arms, upon which all else chiefly depends, is as well known to the public as to myself, and it is, I trust, reasonably satisfactory and encouraging to all. With high hope for the future, no prediction in regard to it is ventured.

On the occasion corresponding to this four years ago all thoughts were anxiously directed to an impending civil war. All dreaded it, all sought to avert it. While the inaugural address was being delivered from this place, devoted to *saving* the Union without war, insurgent agents were in the city seeking to *destroy* it without war—seeking to dissolve the Union and divide effects by negotiation.

Both parties deprecated war, but one of them would *make* war rather than let the nation survive, and the other would *accept* war rather than let it perish, and the war came.

One-eighth of the whole population were colored slaves, not distributed generally over the Union, but localized in the southern part of it. These slaves constituted a peculiar and powerful interest. All knew that this interest was somehow the cause of the war. To strengthen, perpetuate, and extend this interest was the object for which the insurgents would rend the Union even by war, while the government claimed no right to do more than to restrict the territorial enlargement of it. Neither party expected for the war the magnitude or the duration which it has already attained. Neither anticipated that the *cause* of the conflict might cease with or even before the conflict itself should cease. Each looked for an easier triumph, and a result less fundamental and astounding. Both read the same Bible and pray to the same God, and each invokes His aid against the other. It may seem strange that any should dare to ask a just God's assistance in wringing their bread from the sweat of other men's faces, but let us judge not, that we be not judged. The prayers of both could not be answered. That of neither has been answered fully. The Almighty has His own purposes. "Woe unto the world because of offenses; for it must needs be that offenses come, but woe to that man by whom the offense cometh." If we shall suppose that American slavery is one of those offenses which, in the providence of God, must needs come, but which, having continued through His appointed time, He now wills to remove, and that He gives to both North and South this terrible war as the woe due to those by whom the offense came, shall we discern therein any departure from those divine attributes which the believers in a living God al-

ways ascribe to Him? Fondly do we hope, fervently do we pray, that this mighty scourge of war may speedily pass away. Yet, if God wills that it continue until all the wealth piled by the bondsman's two hundred and fifty years of unrequited toil shall be sunk, and until every drop of blood drawn with the lash shall be paid by another drawn with the sword, as was said three thousand years ago, so still it must be said "the judgments of the Lord are true and righteous altogether."

With malice toward none, with charity for all, with firmness in the right as God gives us to see the right, let us strive on to finish the work we are in, to bind up the nation's wounds, to care for him who shall have borne the battle and for his widow and his orphan, to do all which may achieve and cherish a just and lasting peace among ourselves and with all nations.

50. Progressivism and Social Justice [1]

The year 1912 produced one of the most memorable political campaigns in recent American history. Mr. Roosevelt, who led the forces of the Progressive Party, was at his best in this campaign, and several of his speeches are notable contributions to the cause of progressive government and social justice. The following speech was delivered at Louisville, Kentucky, in April, 1912, during the primary campaign. The theme of the speech is one which Mr. Roosevelt frequently touched upon.

A well-meaning man may vaguely think of himself as a Progressive without having even the faintest conception of what a Progressive is.

Both vision and intensity of conviction must go to the make-up of any man who is to lead the forward movement, and mildly good intentions are utterly useless as

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substitutes. The essential difference, as old as civilized history, is between the men who with fervor and broad sympathy and imagination stand for the uplift and betterment of mankind, and who have faith in the people, on the one hand; and on the other hand, the men of narrow vision and small sympathy, who are not stirred by the wrongs of others. With these latter stand also those men who distrust the people, and many of whom not merely distrust the people but wish to keep them helpless so as to exploit them for their own benefit. The difference has never been more accurately set forth than in a lecture by the great English writer, Mr. J. A. Froude, delivered some forty-five years ago, and running as follows:

"Two kinds of men . . . appear as leaders in time of change . . . On one side there are the . . . men who have no confidence in the people—who have no passionate convictions—men who believe that all wholesome reforms proceed downward from the educated to the multitudes; who regard with contempt, qualified by terror, appeals to the popular conscience or to popular intelligence.

"Opposite to these are the men of faith—and by faith I do not mean belief in dogmas, but belief in goodness, belief in justice, in righteousness. . . . They are not contented with looking for what may be useful or pleasant to themselves; they look by quite other methods for what is honorable, for what is good, for what is just. They believe that if they can find out that, then at all hazards, and in spite of all present consequences to themselves, that is to be preferred.

"When the air is heavy with impostors and men live only to make money. . . . and the kingdom of heaven is bought and sold, and all that is high and pure in man is smothered by corruption; fire of the same kind bursts out

in higher natures with a fierceness which cannot be controlled; and confident in truth and right, they call fearlessly on the seven thousand in Israel who have not bowed the knee to Baal to rise and stand by them.

"They do not ask whether those whom they address have wide knowledge of history or science or philosophy; they ask rather that they shall be honest, that they shall be brave. . . . They know well that conscience is no exceptional privilege of the great or the cultivated, that to be generous and unselfish is no prerogative of rank or intellect."

We of today who stand for the Progressive movement here in the United States are not wedded to any particular kinds of machinery, save solely as means to the end desired. Our aim is to secure the real and not the nominal rule of the people. With this end in view, we purpose to do away with whatever in our government tends to secure to privilege, and to the great sinister special interests, a rampart from behind which they can beat back the forces that strive for social and industrial justice and frustrate the will of the people.

For this purpose we believe in securing for the people the direct election of United States senators exactly as the people have already secured in actual practice the direct election of the President. We believe in securing for the people the right of nominating candidates for office, from the President down, by direct primaries, because the convention system, good in its day, has been twisted from its purpose, so that the delegates to the conventions when chosen under the present methods by pressure of money and patronage, often deliberately misrepresent instead of representing the popular will.

We believe in securing to the people the exercise of a real and not merely a nominal control over their repre-

sentatives in office, this control to include the power to secure the enactment of laws which the people demand, and the rejection of laws to which the people are opposed if after due effort it is found impossible to get from the legislature and the courts a real representation of the deliberate popular judgment in these matters.

But these and kindred measures are merely machinery, and each community must judge for itself as to the machinery which its needs make necessary. The object, however, must be the same everywhere; that is, to give the people real control, and to have the people exercise this control in a spirit of the broadest sympathy and broadest desire to secure social and industrial justice for every man and woman, so that the work of all of us may be done, and the lives of all of us led, under conditions which will tend to increase the dignity, the worth, and the efficiency of each individual.

If in any State the courts, in addition to doing justice in the ordinary cases between man and man, have striven to help and not hamper the people in their efforts to secure social and industrial justice in a far broader sense for the people as a whole, then in that community there may be no need for change as regards them. But where, in any community, as in my own State of New York, for instance, the highest court of the State, because of its adherence to outworn, to dead and gone, systems of philosophy, and its lack of understanding of and sympathy with the living, the vital needs of those in the community whose needs are greatest, becomes a bulwark of privilege and the most effective of all means for preventing the people from working in efficient fashion for true justice; then I hold that the people must themselves be given the power, after due deliberation and in constitutional fashion, to have their judgment made efficient and their interpreta-

tion of the Constitution made binding upon their servants the judges, no less than upon their servants the legislators and executives.

Every man who fights fearlessly and effectively against special privilege in any form is to that extent a Progressive. Every man who, directly or indirectly, upholds privilege and favors the special interests, whether he acts from evil motives or merely because he is puzzle-headed or dull of mental vision, or lacking in social sympathy, or whether he simply lacks interest in the subject, is a reactionary.

Every man is to that extent a Progressive if he stands for any form of social justice, whether it be securing proper protection for factory girls against dangerous machinery, for securing a proper limitation of hours of labor for women and children in industry, for securing proper living conditions for those who dwell in the thickly crowded regions of our great cities, for helping, so far as legislation can help, all the conditions of work and life for wage-workers in great centers of industry, or for helping by the action both of the National and State Governments, so far as conditions will permit, the men and women who dwell in the open country to increase their efficiency both in production on their farms and in business arrangements for the marketing of their produce, and also to increase the opportunities to give the best possible expression to their social life.

The man is a reactionary, whatever may be his profession and no matter how excellent his intentions, who opposes these movements, or who, if in high place, takes no interest in them and does not earnestly lead them forward.

Prosperity can only permanently come to this country on a basis of honesty and of fair treatment for all. Those

men of enormous wealth who bitterly oppose every species of effective control by the people through their governmental agents over the business use of that wealth are, I verily believe, most short-sighted as to their own ultimate interests. They should welcome such effort, they should welcome every effort to make them observe and to assist them in observing the law, so that their activities shall be helpful and not harmful to the American people. Most surely if the wise and moderate control we advocate does not come, then some day these men or their descendants will have to face the chance of some movement of really dangerous and drastic character being directed against them. The very wealthy men who oppose this action illustrate the undoubted truth that some of the men who have the money touch, some of the men who can amass enormous fortunes, possess an ability as specialized and non-indicative of other forms of ability as the ability to play chess exceptionally well, or to add up four columns of figures at once. The men of wealth of this type are not only hostile to the interests of the country but hostile to their own interests; their great business ability is unaccompanied by even the slightest ability to read the signs of the times or understand the temper of the American people.

I stand for the adequate control, the real control, of all big business, and especially of all monopolistic big business where it proves unwise or impossible to break up the monopoly.

The present contest is but a phase of the larger struggle. Assuredly the fight will go on. Our opponents, representing the brute power of seated privilege, can only win by using the led captains of mercenary politics, and the crooked financiers who stand behind those led captains, and those newspapers which these financiers and politi-

cians own, influence, or control. They can only win by playing upon the timidity or short-sightedness or the mere lack of knowledge of worthy citizens, and by misleading them into supporting for a moment the powers that prey, the powers of pillage, the dread powers that exploit the people for their own purpose and that turn popular government into a sinister sham.

Certain big men who, alas, have sometimes perverted the courts to their own uses now tell us that it is impious to speak of the people's insisting upon justice being done by the courts. We answer that with all our might we will uphold the courts against lawlessness; and that we also intend to see that in their turn the courts give justice to all. We say, in the words of Lincoln, that we must prevent wrong "being done either by Congress or courts. The people of these United States are rightful masters of both Congress and courts, not to overthrow the Constitution, but to overthrow the men who pervert the Constitution."

We who stand for the cause of progress, for the cause of the uplift of humanity and the betterment of mankind, are pledged to eternal war against tyranny and wrong, by the few or by the many, by a plutocracy or by a mob. We stand for justice and for fair play. Fearless and confident, we face the coming years, for we know that ours are the banners of justice, and that all men who wish well to the people must fight under them.

We fight to make this country a better place to live in for those who have been harshly treated by fate; and if we succeed it will be a better place to live in for those who have been well treated.

None of us can really prosper permanently if masses of our fellows are debased and degraded, if masses of men and women are ground down and forced to lead starved

and sordid lives, so that their souls are crippled like their bodies and the fine edge of their every feeling blunted.

I ask that those of us to whom Providence, to whom fate has been kind, remember that each must be his brother's keeper, and that all must feel their obligation to the less fortunate who work beside us in the strain and press of our eager modern life. I ask justice for the weak for their sakes, and I ask it also for the sake of our children, and of our children's children who are to come after us.

This country will not be a good place for any of us to live in if it is not a reasonably good place for all of us to live in.

When I plead the cause of the crippled brakeman on a railroad, of the overworked girl in a factory, of the stunted child toiling at inhuman labor, of all who work excessively or in unhealthy surroundings, of the family dwelling in the squalor of a noisome tenement, of the worn-out farmer in regions where the farms are worn out also; when I protest against the unfair profits of unscrupulous and conscienceless men or against the greedy exploitation of the helpless by the beneficiaries of privilege; in all these cases I am not only fighting for the weak, I am also fighting for the strong.

The sons of all of us will pay in the future if we of the present do not do justice in the present.

If the fathers cause others to eat bitter bread, the teeth of their own sons shall be set on edge.

Our cause is the cause of justice for all, in the interest of all. Surely there was never a more noble cause; surely there was never a cause in which it was better worth while to spend and be spent.

51. Wilson's War Message

Following his address to Congress of February 26, 1917, in which he urged the arming of American merchantmen, President Wilson came to the conclusion that neutrality was incompatible with our undoubted rights. He therefore went before Congress on April 2 to recommend a declaration of war. This was one of the most dramatic moments in our history, and Mr. Wilson's famous words resounded throughout the world. Congress passed the war resolution on April 5 and war was proclaimed the following day.

I have called the Congress into extraordinary session because there are serious, very serious, choices of policy to be made, and made immediately, which it was neither right nor constitutionally permissible that I should assume the responsibility of making.

On the third of February last I officially laid before you the extraordinary announcement of the Imperial German Government that on and after the first day of February it was its purpose to put aside all restraints of law or of humanity and use its submarines to sink every vessel that sought to approach either the ports of Great Britain and Ireland or the western coast of Europe or any of the ports controlled by the enemies of Germany within the Mediterranean. That had seemed to be the object of the German submarine warfare earlier in the war, but since April of last year the Imperial Government had somewhat restrained the commanders of its undersea craft in conformity with its promise then given to us that passenger boats should not be sunk and that due warning would be given to all other vessels which its submarines might seek to destroy, when no resistance was offered or escape attempted, and care taken that their crews were given at least a fair chance to save their lives in their open boats. The precautions taken were meager

and haphazard enough, as was proved in distressing instance after instance in the progress of the cruel and unmanly business, but a certain degree of restraint was observed. The new policy has swept every restriction aside. Vessels of every kind, whatever their flag, their character, their cargo, their destination, their errand, have been ruthlessly sent to the bottom without warning and without thought of help or mercy for those on board, the vessels of friendly neutrals along with those of belligerents. Even hospital ships and ships carrying relief to the sorely bereaved and stricken people of Belgium, though the latter were provided with safe conduct through the prescribed areas by the German Government itself and were distinguished by unmistakable marks of identity, have been sunk with the same reckless lack of compassion or of principle.

I was for a little while unable to believe that such things would in fact be done by any government that had hitherto subscribed to the humane practices of civilized nations. International law had its origin in the attempt to set up some law which would be respected and observed upon the seas, where no nation had right of dominion and where lay the free highways of the world. By painful stage after stage has that law been built up, with meager enough results, indeed, after all was accomplished that could be accomplished, but always with a clear view, at least, of what the heart and conscience of mankind demanded. This minimum of right the German Government has swept aside under the plea of retaliation and necessity and because it had no weapons which it could use at sea except these which it is impossible to employ as it is employing them without throwing to the winds all scruples of humanity or of respect for the understandings that were supposed to underlie the intercourse of the

world. I am not now thinking of the loss of property involved, immense and serious as that is, but only of the wanton and wholesale destruction of the lives of non-combatants, men, women, and children, engaged in pursuits which have always, even in the darkest periods of modern history, been deemed innocent and legitimate. Property can be paid for: the lives of peaceful and innocent people cannot be. The present German submarine warfare against commerce is a warfare against mankind.

It is a war against all nations. American ships have been sunk, American lives taken, in ways which it has stirred us very deeply to learn of, but the ships and people of other neutral and friendly nations have been sunk and overwhelmed in the waters in the same way. There has been no discrimination. The challenge is to all mankind. Each nation must decide for itself how it will meet it. The choice we make for ourselves must be made with moderation of counsel and temperateness of judgment befitting our character and our motives as a nation. We must put excited feeling away. Our motive will not be revenge or the victorious assertion of the physical might of the nation, but only the vindication of right, of human right, of which we are only a single champion.

When I addressed the Congress on the twenty-sixth of February last I thought that it would suffice to assert our neutral rights with arms, our right to use the seas against unlawful interference, our right to keep our people safe against unlawful violence. But armed neutrality, it now appears, is impracticable. Because submarines are in effect outlaws when used as the German submarines have been used against merchant shipping, it is impossible to defend ships against their attacks as the law of nations has assumed that merchantmen would defend themselves against privateers or cruisers, visible craft giving

chase upon the open sea. It is common prudence in such circumstances, grim necessity indeed, to endeavor to destroy them before they have shown their own intention. They must be dealt with upon sight, if dealt with at all. The German Government denies the right of neutrals to use arms at all within the areas of the sea which it has proscribed, even in the defense of rights which no modern publicist has ever before questioned their right to defend. The intimation is conveyed that the armed guards which we have placed on our merchant ships will be treated as beyond the pale of law and subject to be dealt with as pirates would be. Armed neutrality is ineffectual enough at best; in such circumstances and in face of such pretensions it is worse than ineffectual: it is likely only to produce what it was meant to prevent; it is practically certain to draw us into the war without either the rights or the effectiveness of belligerents. There is one choice we cannot make, we are incapable of making: we will not choose the path of submission and suffer the most sacred rights of our nation and our people to be ignored or violated. The wrongs against which we now array ourselves are no common wrongs; they cut to the very roots of human life.

With a profound sense of the solemn and even tragical character of the step I am taking and of the grave responsibilities which it involves, but in unhesitating obedience to what I deem my constitutional duty, I advise that the Congress declare the recent course of the Imperial German Government to be in fact nothing less than war against the government and people of the United States; that it formally accept the status of belligerent which has thus been thrust upon it; and that it take immediate steps not only to put the country in a more thorough state of defense but also to exert all its power and employ all its

resources to bring the Government of the German Empire to terms and end the war.

What this will involve is clear. It will involve the utmost practicable coöperation in counsel and action with the governments now at war with Germany, and, as incident to that, the extension to those governments of the most liberal financial credits, in order that our resources may so far as possible be added to theirs. It will involve the organization and mobilization of all the material resources of the country to supply the materials of war and serve the incidental needs of the nation in the most abundant and yet the most economical and efficient way possible. It will involve the immediate full equipment of the navy in all respects but particularly in supplying it with the best means of dealing with the enemy's submarines. It will involve the immediate addition to the armed forces of the United States already provided for by law in case of war at least five hundred thousand men, who should, in my opinion, be chosen upon the principle of universal liability to service, and also the authorization of subsequent additional increments of equal force so soon as they may be needed and can be handled in training. It will involve also, of course, the granting of adequate credits to the Government, sustained, I hope, so far as they can equitably be sustained by the present generation, by well conceived taxation.

I say sustained so far as may be equitable by taxation because it seems to me that it would be most unwise to base the credits which will now be necessary entirely on money borrowed. It is our duty, I most respectfully urge, to protect our people so far as we may against the very serious hardships and evils which would be likely to arise out of the inflation which would be produced by vast loans.

In carrying out the measures by which these things are to be accomplished we should keep constantly in mind the wisdom of interfering as little as possible in our own preparation and in the equipment of our own military forces with the duty,—for it will be a very practical duty,—of supplying the nations already at war with Germany with the materials which they can obtain only from us or by our assistance. They are in the field and we should help them in every way to be effective there.

I shall take the liberty of suggesting, through the several executive departments of the Government, for the consideration of your committees, measures for the accomplishment of the several objects I have mentioned. I hope that it will be your pleasure to deal with them as having been framed after very careful thought by the branch of the Government upon which the responsibility of conducting the war and safeguarding the nation will most directly fall.

While we do these things, these deeply momentous things, let us be very clear, and make very clear to all the world what our motives and our objects are. My own thought has not been driven from its habitual and normal course by the unhappy events of the last two months, and I do not believe that the thought of the nation has been altered or clouded by them. I have exactly the same things in mind now that I had in mind when I addressed the Senate on the twenty-second of January last; the same that I had in mind when I addressed the Congress on the third of February and on the twenty-sixth of February. Our object now, as then, is to vindicate the principles of peace and justice in the life of the world as against selfish and autocratic power and to set up amongst the really free and self-governed peoples of the world such a concert of purpose and of action as will henceforth insure

the observance of those principles. Neutrality is no longer feasible or desirable where the peace of the world is involved and the freedom of its peoples, and the menace to that peace and freedom lies in the existence of autocratic governments backed by organized force which is controlled wholly by their will, not by the will of their people. We have seen the last of neutrality in such circumstances. We are at the beginning of an age in which it will be insisted that the same standards of conduct and of responsibility for wrong done shall be observed among nations and their governments that are observed among the individual citizens of civilized states.

We have no quarrel with the German people. We have no feeling towards them but one of sympathy and friendship. It was not upon their impulse that their government acted in entering this war. It was not with their previous knowledge or approval. It was a war determined upon as wars used to be determined upon in the old, unhappy days when peoples were nowhere consulted by their rulers and wars were provoked and waged in the interest of dynasties or of little groups of ambitious men who were accustomed to use their fellow-men as pawns and tools. Self-governed nations do not fill their neighbor states with spies or set the course of intrigue to bring about some critical posture of affairs which will give them an opportunity to strike and make conquest. Such designs can be successfully worked out only under cover and where no one has the right to ask questions. Cunningly contrived plans of deception or aggression, carried, it may be, from generation to generation, can be worked out and kept from the light only within the privacy of courts or behind the carefully guarded confidences of a narrow and privileged class. They are happily impossible where pub-

lic opinion commands and insists upon full information concerning all the nation's affairs.

A steadfast concert for peace can never be maintained except by a partnership of democratic nations. No autocratic government could be trusted to keep faith within it or observe its covenants. It must be a league of honor, a partnership of opinion. Intrigue would eat its vitals away; the plottings of inner circles who could plan what they would and render account to no one would be a corruption seated at its very heart. Only free peoples can hold their purpose and their honor steady to a common end and prefer the interests of mankind to any narrow interest of their own.

Does not every American feel that assurance has been added to our hope for the future peace of the world by the wonderful and heartening things that have been happening within the last few weeks in Russia? Russia was known by those who knew it best to have been always in fact democratic at heart, in all the vital habits of her thought, in all the intimate relationships of her people that spoke their natural instinct, their habitual attitude towards life. The autocracy that crowned the summit of her political structure, long as it has stood and terrible as was the reality of its power, was not in fact Russian in origin, character, or purpose; and now it has been shaken off and the great, generous Russian people have been added in all their naïve majesty and might to the forces that are fighting for freedom in the world, for justice, and for peace. There is a fit partner for a League of Honor.

One of the things that has served to convince us that the Prussian autocracy was not and could never be our friend, is that from the very outset of the present war it has filled our unsuspecting communities and even our

offices of government with spies and set criminal intrigues everywhere afoot against our national unity of counsel, our peace within and without, our industries and our commerce. Indeed it is now evident that its spies were here even before the war began; and it is unhappily not a matter of conjecture but a fact proved in our courts of justice that the intrigues which have more than once come perilously near to disturbing the peace and dislocating the industries of the country have been carried on at the instigation, with the support, and even under the personal direction of official agents of the Imperial Government accredited to the Government of the United States. Even in checking these things and trying to extirpate them we have sought to put the most generous interpretation possible upon them because we knew that their source lay, not in any hostile feeling or purpose of the German people towards us (who were, no doubt, as ignorant of them as we ourselves were), but only in the selfish designs of a Government that did what it pleased and told its people nothing. But they have played their part in serving to convince us at last that that Government entertains no real friendship for us and means to act against our peace and security at its convenience. That it means to stir up enemies against us at our very doors the intercepted note to the German Minister at Mexico City is eloquent evidence.

We are accepting this challenge of hostile purpose because we know that in such a government, following such methods, we can never have a friend; and that in the presence of its organized power, always lying in wait to accomplish we know not what purpose, there can be no assured security for the democratic governments of the world. We are now about to accept gauge of battle with this natural foe to liberty and shall, if necessary, spend

the whole force of the nation to check and nullify its pretensions and its power. We are glad, now that we see the facts with no veil of false pretense about them, to fight thus for the ultimate peace of the world and for the liberation of its peoples, the German peoples included: for the rights of nations great and small and the privilege of men everywhere to choose their way of life and of obedience. The world must be made safe for democracy. Its peace must be planted upon the tested foundations of political liberty. We have no selfish ends to serve. We desire no conquest, no dominion. We seek no indemnities for ourselves, no material compensation for the sacrifices we shall freely make. We are but one of the champions of the rights of mankind. We shall be satisfied when those rights have been made as secure as the faith and the freedom of nations can make them.

Just because we fight without rancor and without selfish object, seeking nothing for ourselves but what we shall wish to share with all free peoples, we shall, I feel confident, conduct our operations as belligerents without passion and ourselves observe with proud punctilio the principles of right and of fair play we profess to be fighting for.

I have said nothing of the governments allied with the Imperial Government of Germany because they have not made war upon us or challenged us to defend our right and our honor. The Austro-Hungarian Government has, indeed, avowed its unqualified indorsement and acceptance of the reckless and lawless submarine warfare adopted now without disguise by the Imperial German Government, and it has therefore not been possible for this Government to receive Count Tarnowski, the Ambassador recently accredited to this Government by the Imperial and the Royal Government of Austria-Hungary; but that

Government has not actually engaged in warfare against citizens of the United States on the seas, and I take the liberty, for the present at least, of postponing a discussion of our relations with the authorities at Vienna. We enter this war only where we are clearly forced into it because there are no other means of defending our rights.

It will be all the easier for us to conduct ourselves as belligerents in a high spirit of right and fairness because we act without animus, not in enmity towards a people or with the desire to bring any injury or disadvantage upon them, but only in armed opposition to an irresponsible government which has thrown aside all considerations of humanity and of right and is running amuck. We are, let me say again, the sincere friends of the German people, and shall desire nothing so much as the early reëstablishment of intimate relations of mutual advantage between us,—however hard it may be for them, for the time being, to believe that this is spoken from our hearts. We have borne with their present government through all these bitter months because of that friendship,—exercising a patience and forbearance which would otherwise have been impossible. We shall, happily, still have an opportunity to prove that friendship in our daily attitude and actions towards the millions of men and women of German birth and native sympathy who live amongst us and share our life, and we shall be proud to prove it towards all who are in fact loyal to their neighbors and to the Government in the hour of test. They are, most of them, as true and loyal Americans as if they had never known any other fealty or allegiance. They will be prompt to stand with us in rebuking and restraining the few who may be of a different mind and purpose. If there should be disloyalty, it will be dealt with with a firm hand of stern repression; but, if it lifts its head at

all it will lift it only here and there and without countenance except from a lawless and malignant few.

It is a distressing and oppressive duty, Gentlemen of the Congress, which I have performed in thus addressing you. There are, it may be, many months of fiery trial and sacrifice ahead of us. It is a fearful thing to lead this great peaceful people into war, into the most terrible and disastrous of all wars, civilization itself seeming to be in the balance. But the right is more precious than peace, and we shall fight for the things which we have always carried nearest our hearts,—for democracy, for the right of those who submit to authority to have a voice in their own governments, for the rights and liberties of small nations, for a universal dominion of right by such a concert of free peoples as shall bring peace and safety to all nations and make the world itself at last free. To such a task we can dedicate our lives and our fortunes, everything that we are and everything that we have, with the pride of those who know that the day has come when America is privileged to spend her blood and her might for the principles that gave her birth and happiness and the peace which she has treasured. God helping her, she can do no other.

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